

1 JAMES J. BROSNAHAN (CA SBN 34555)  
2 GEORGE C. HARRIS (CA SBN 111074)  
3 MORRISON & FOERSTER LLP  
4 425 Market Street  
5 San Francisco, California 94105-2482  
6 Telephone: (415) 268-7000  
7 Facsimile: (415) 268-7522  
8 JBrosnahan@mofocom  
9 GHarris@mofocom

6 BENJAMIN J. FOX (CA SBN 193374)  
7 MORRISON & FOERSTER LLP  
8 555 West Fifth Street, Suite 3500  
9 Los Angeles, California 90013-1024  
10 Telephone: (213) 892-5200  
11 Facsimile: (213) 892-5454  
12 BFox@mofocom

10 Attorneys for Defendant  
11 CITIZENS REDISTRICTING COMMISSION

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 GEORGE RADANOVICH, CHARLES  
16 PATRICK, GWEN PATRIC, OMAR  
17 NARARRO, TRUNG PHAN,

18 Plaintiffs,

19 v.

20 DEBRA BOWEN, in her official  
21 capacity as SECRETARY OF STATE  
22 OF CALIFORNIA; THE CITIZENS  
23 REDISTRICTING COMMISSION,

24 Defendants.

No. 2:11-cv-09786-SVW (PJW)

**NOTICE OF MOTION AND  
MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT;  
and**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: February 13, 2012  
Time: 1:30 p.m.  
Ctrm.: 6

[Honorable Stephen V. Wilson]

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**TABLE OF CONTENTS**

|  | <b>Page</b> |
|--|-------------|
| NOTICE OF MOTION AND MOTION.....   | 1           |
| MEMORANDUM OF POINTS AND AUTHORITIES.....  | 3           |
| I.    INTRODUCTION .....   | 3           |
| II.   RELEVANT FACTUAL BACKGROUND .....  | 4           |
| A.   Proposition 11 (the Voters First Act) .....   | 4           |
| B.   Proposition 20 .....  | 5           |
| C.   The Selection of a Fair and Impartial Commission.....   | 6           |
| D.   The Commission’s Open and Extensive Public Hearing<br>and Map-Drawing Process.....  | 7           |
| E.   Certification of the Final Maps and Issuance of the<br>Commission’s Final Report.....   | 9           |
| F.   Plaintiffs File <i>Radanovich v. Bowen</i> in the California<br>Supreme Court.....  | 10          |
| G.   The California Supreme Court, Exercising “Original and<br>Exclusive Jurisdiction,” Denies Plaintiffs’ Challenges to<br>the Commission’s Certified Final Maps.....                       | 10          |
| III.  ALL CLAIMS ARE BARRED BY RES JUDICATA<br>BECAUSE THE CALIFORNIA SUPREME COURT<br>CONSIDERED AND REJECTED ON THE MERITS<br>VIRTUALLY IDENTICAL CLAIMS BY THESE<br>SAME PLAINTIFFS ..... | 11          |
| A.   Applicable Legal Standards: The Res Judicata Effect<br>of State Court Decisions .....   | 11          |
| B.   The California Supreme Court Action, <i>Radanovich v.<br/>            Bowen</i> , Resulted in “a Final Judgment on the Merits.”.....  | 12          |
| C.   The California Supreme Court Action Involved the<br>Same Claims and the Same “Primary Right” Asserted<br>in This Case .....   | 14          |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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14  
15  
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18  
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20  
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22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**  
**(continued)**

**Page**

- D. The California Supreme Court Action Involved the Same Parties as in This Case ..... 15
- IV. PLAINTIFFS’ THIRD CLAIM FOR RELIEF FAILS FOR THE ADDITIONAL REASON THAT PLAINTIFFS HAVE NOT PLEADED FACTS THAT SUPPORT A CLAIM UNDER SECTION 5 OF THE VOTING RIGHTS ACT ..... 16
  - A. Plaintiffs Have Pleaded No Facts to Support the Claim ..... 16
  - B. Plaintiffs Could Not Plead Facts to State a Claim Under Section 5 of the Voting Rights Act Because the Districts at Issue Are Not “Covered Jurisdictions” Under Section 5 ..... 16
- V. CONCLUSION ..... 17

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**CASES**

*Ashcroft v. Iqbal*,  
556 U.S. 662, 129 S. Ct. 1937 (2009) ..... 1, 4, 16

*Bay Cities Paving & Grading v. Lawyers’ Mutual Ins. Co.*,  
5 Cal. 4th 854 (1993)..... 15

*Bell Atl. Corp. v. Twombly*,  
550 U.S. 544, 127 S. Ct. 1955 (2007) ..... 1, 4, 16

*Dillard v. Crenshaw County*,  
640 F. Supp. 1347 (M.D. Ala. 1986)..... 15

*Eichman v. Fotomat Corp.*,  
759 F.2d 1434 (9th Cir. 1985)..... 11

*Funeral Directors Assoc. v. Bd. of Funeral Directors & Embalmers*,  
22 Cal. 2d 104 (1943)..... 13

*Geibel v. State Bar of Cal.*,  
14 Cal. 2d 144 (1939)..... 13

*Henrichs v. Valley View Dev.*,  
474 F.3d 609 (9th Cir. 2010)..... 11

*In re Rose*,  
22 Cal. 4th 430 (2000)..... 3, 12

*Jackson v. Waller Indep. Sch. Dist.*,  
No. H-07-3086, 2008 WL 818330,  
2008 U.S. Dist. LEXIS 22923 (S.D. Tex. Mar. 24, 2008) ..... 15

*Manufactured Home Cmtys., Inc. v. City of San Jose*,  
420 F.3d 1022 (9th Cir. 2005)..... 11, 12

*Mycogen Corp. v. Monsanto Co.*,  
28 Cal. 4th 888 (2002)..... 11, 12, 14

*Napa Valley Elec. Co. v. Railroad Com.*,  
251 U.S. 366, 40 S. Ct. 174 (1920) ..... 3, 13

1 *Nolles v. State Comm. for the Reorganization of Sch. Dist.*,  
 2 No. 8:06CV422,  
 3 2006 U.S. Dist. LEXIS 84466 (N. Neb. Nov. 20, 2006)..... 15  
 4 *Pacific Tel. & Tel. Co. v. Public Utilities Com.*,  
 5 600 F.2d 1309 (9th Cir. 1979)..... 13  
 6 *Radanovich v. Bowen*,  
 7 No. S196852,  
 8 2011 Cal. LEXIS 10999 (Cal. Oct. 26, 2011).....passim  
 9 *Robertson v. Bartels*,  
 10 148 F. Supp. 2d 443 (D. N.J. 2001)..... 15  
 11 *Sanchez v. City of Santa Ana*,  
 12 936 F.2d 1027 (9th Cir. 1990)..... 12, 14  
 13 *Silverado Modjeska Recreation & Park Dist. v. Cty. of Orange*,  
 14 197 Cal. App. 4th 282 (2011)..... 15  
 15 *Slater v. Blackwood*,  
 16 15 Cal. 3d 791 (1975)..... 15  
 17 *Smith v. Commonwealth of Virginia*,  
 18 No. 3:10cv881, 2011 WL 1348334,  
 19 2011 U.S. Dist. LEXIS 38553 (E. D. Va. Apr. 8, 2011)..... 15  
 20 *Warden v. Pataki*,  
 21 35 F. Supp. 2d 354 (S.D.N.Y. 1999)..... 15  
 22 *Wilson v. Eu*,  
 23 1 Cal. 4th 707 (1992)..... 17  
 24 **CONSTITUTIONS**  
 25 U.S. Const. 14th Amend..... 10, 14  
 26 Cal. Const. art. XXI .....passim  
 27 Cal. Const. art. XXI, § 2 .....passim  
 28 Cal. Const. art. XXI, § 3 .....passim

|    |   |      |
|----|---|------|
| 1  | <b>STATUTES AND RULES</b>               |      |
| 2  | 28 U.S.C. § 1738.....                   | 11   |
| 3  | 42 U.S.C. § 1973b.....                  | 16   |
| 4  | 42 U.S.C. § 1973L .....                 | 17   |
| 5  | 42 U.S.C. § 1988.....                   | 17   |
| 6  | Cal. Gov. Code § 8252 .....             | 6, 7 |
| 7  | Cal. Gov. Code § 8253 .....             | 7, 8 |
| 8  | Fed. R. Civ. P. 12.....                 | 1    |
| 9  | Fed. R. Evid. 201 .....                 | 4    |
| 10 |   |      |
| 11 | <b>REGULATIONS</b>                      |      |
| 12 | 36 Fed. Reg. 5809 (Mar. 27, 1971) ..... | 17   |
| 13 | 40 Fed. Reg. 43746 (Sep. 23, 1975)..... | 16   |
| 14 |   |      |
| 15 |   |      |
| 16 |   |      |
| 17 |   |      |
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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 13, 2012 at 1:30 p.m., or as soon thereafter as this matter may be heard, before the Honorable Stephen V. Wilson, in Courtroom 6 of the above-titled Court, located at 312 Spring Street, Los Angeles, California, the Citizens Redistricting Commission (the “Commission”) shall and hereby does move pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss all of the Claims for Relief alleged in Plaintiffs’ complaint.

The grounds for this Motion include:

1. All claims for relief are barred by res judicata because they were brought—or could have been brought—in the virtually identical lawsuit filed by these same Plaintiffs against the Commission in the California Supreme Court, in a proceeding in which the California Supreme Court had “original and exclusive jurisdiction” pursuant to Article XXI, section 3 of the California Constitution. This prior lawsuit, *Radanovich v. Bowen*, No. S196852, 2011 Cal. LEXIS 10999 (Oct. 26, 2011), concluded with a final ruling on the merits in the Commission’s favor, and it is res judicata here.

2. Plaintiffs’ Third Claim for Relief, for purported violation of Section 5 of the Voting Rights Act (VRA), fails for the additional reason that the complaint contains no factual averments supporting the claim, in violation of the pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). On its face, the Third Claim fails for lack of a cognizable legal theory because none of the Congressional districts at issue are in “covered jurisdictions” under Section 5 of VRA.

This Motion is based upon this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the pleadings and records on file in this action, and upon such additional

1 argument and evidence that may be introduced prior to or in connection with the  
2 hearing on this Motion.

3 This Motion is made following a pre-filing conference of counsel that  
4 commenced on January 3 and concluded on January 11, 2012.

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Dated: January 12, 2012

Respectfully submitted,  
MORRISON & FOERSTER LLP

By:           /s/ James J. Brosnahan            
James J. Brosnahan  
Attorneys for Defendant  
CITIZENS REDISTRICTING  
COMMISSION



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The U.S. Congressional districts drawn by the Citizens Redistricting  
4 Commission at issue in this lawsuit are the result of an extraordinary, multi-month  
5 process mandated by Propositions 11 and 20, which amended the California  
6 Constitution to vest redistricting authority in the independent, 14-member  
7 Commission—and required the Commission to “conduct an open and transparent  
8 process” enabling full public participation in the redistricting process, in addition to  
9 complying fully with the U.S. Constitution, the Voting Rights Act, and all other  
10 applicable federal and state laws. Cal. Const. art. XXI, § 2(b).

11 In adopting Propositions 11 and 20, the voters also amended the California  
12 Constitution to provide “original and exclusive jurisdiction” in the California  
13 Supreme Court for all challenges to the Commission’s certified districts, including  
14 by granting standing to “any registered voter” to bring claims directly in the state  
15 Supreme Court. Cal. Const. art. XXI, § 3(b). The same parties who are Plaintiffs  
16 here took advantage of that constitutional grant of standing—filing in the California  
17 Supreme Court a 64-page petition, together with supporting declarations and a four-  
18 volume Request for Judicial Notice. The prior lawsuit, *Radanovich v. Bowen*,  
19 No. S196852, alleged claims that are virtually identical to those alleged here, and  
20 challenged the same Congressional districts. The state Supreme Court considered  
21 Plaintiffs’ claims on their merits and rejected them.

22 As this brief explains, the California Supreme Court’s ruling in the prior  
23 action is res judicata here. Where, as here, a state supreme court has original and  
24 exclusive jurisdiction, even the summary denial of a plaintiff’s petition for relief is  
25 a final ruling on the merits for purposes of res judicata. *Napa Valley Elec. Co. v.*  
26 *Railroad Com.*, 251 U.S. 366, 373 (1920); *In re Rose*, 22 Cal. 4th 430, 446 (2000).

27 All other elements for res judicata to apply are also satisfied: This case  
28 involves the same causes of action, and identical parties, as *Radanovich I*.

1 Accordingly, this action is barred by res judicata and should be dismissed without  
2 leave to amend.

3 Even if, arguendo, Plaintiffs’ claim under Section 5 of the Voting Rights Act  
4 could somehow escape the doctrine of res judicata, the claim should be dismissed  
5 for failure to satisfy the pleading standards of *Twombly* and *Iqbal*. And, this claim  
6 fails for lack of a cognizable legal theory because Section 5 does not apply to the  
7 Los Angeles-area Congressional at issue in this lawsuit. Section 5 applies only to  
8 four “covered counties” in California, and Los Angeles is not among them.

9 For the reasons discussed more fully herein, Plaintiffs’ lawsuit is fatally  
10 flawed and should be dismissed without leave to amend.

11 **II. RELEVANT FACTUAL BACKGROUND**<sup>1</sup>

12 **A. Proposition 11 (the Voters First Act)**

13 In adopting Proposition 11 in 2008, the people of California amended the  
14 California Constitution and created a new state constitutional body—the  
15 independent, 14-member Commission—tasked with responsibility for drawing state  
16 Senate, Assembly and Board of Equalization district lines following each U.S.  
17 Census. Cal. Const. art. XXI.

18 Proposition 11 responded to criticism of a legislative redistricting process  
19 that lacked transparency and favored incumbents. Its passage amended the  
20 California Constitution to provide that the Commission shall, among other things,

- 21 (1) conduct an open and transparent process enabling  
22 full public consideration of and comment on the drawing  
23 of district lines; (2) draw district lines according to the  
24 redistricting criteria specified in this article; and  
(3) conduct themselves with integrity and fairness.

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25 <sup>1</sup> The facts stated herein were presented to the California Supreme Court in  
26 *Radanovich v. Bowen*, No. S196852, and are supported by official Commission  
27 records and other publicly available materials of which the California Supreme  
28 Court took judicial notice. The Commission respectfully requests that this Court  
take judicial notice of the same materials. Fed. R. Evid. 201(b).

1 Cal. Const. art. XXI, § 2(b).

2 Article XXI, as amended, establishes six criteria that the Commission must  
3 consider in drawing new district lines, and the order of priority in which these  
4 criteria are to be applied. Cal. Const. art. XXI, § 2(d). The highest-order criteria  
5 are compliance with the U.S. Constitution and the Voting Rights Act. *Id.*

6 Proposition 11 also amended the California Constitution to provide that  
7 “[t]he Supreme Court [of California] has original and exclusive jurisdiction in all  
8 proceedings in which a certified final map is challenged.” Cal. Const. art. XXI,  
9 § 3(b)(1). Challenges may be filed directly in the California Supreme Court:

10 Any registered voter in this state may file a petition  
11 for a writ of mandate or writ of prohibition, within  
12 45 days after the commission has certified a final map  
13 to the Secretary of State, to bar the Secretary of State  
14 from implementing the plan on the grounds that the  
filed plan violates this Constitution, the United States  
Constitution, or any federal or state statute.

15 Cal. Const. art. XXI, § 3(b)(2).

16 Post-Proposition 11, the California Supreme Court “shall give priority to  
17 ruling on a petition for writ of mandate” challenging the Commission’s maps and, if  
18 the court determines the maps violate the Constitution or any federal or state  
19 statute, the court “shall fashion” appropriate relief. *Id.* § 3(b)(3).

20 **B. Proposition 20**

21 In November 2010, California’s voters approved Proposition 20, further  
22 amending Article XXI of the California Constitution to direct the Commission to  
23 also draw lines for U.S. Congressional districts.

24 Proposition 20 also amended Article XXI, section 2 to define the term  
25 “community of interest” within the redistricting criteria, and it changed the date by  
26 which the Commission must submit all certified maps to the Secretary of State from  
27 September 15 to August 15, 2011. Cal. Const. art. XXI, § 2(g).

28

1           **C.     The Selection of a Fair and Impartial Commission.**

2           The Voters First Act established a selection process for Commissioners that  
3 is rigorous, fair, and “designed to produce a commission that is independent from  
4 legislative influence and reasonably representative of this State’s diversity.”  
5 Cal. Const. art. XXI, § 2(c)(1).<sup>2</sup>

6           The process for selection of the Commission is explained in detail in the  
7 Commission’s brief filed in the California Supreme Court in *Radanovich v. Bowen*,  
8 No. S196493 (“*Radanovich I*”). (RJN Ex. G at 1748-50.)<sup>3</sup> In short, the State  
9 Auditor solicited more than 36,000 applications. (*See, e.g.*, RJN at 2736.)  
10 An independent Applicant Review Panel then screened applicants, applying  
11 rigorous conflict-of-interest rules. Cal. Gov. Code § 8252(a)(2) & (d).

12           The Applicant Review Panel selected 60 qualified applicants as potential  
13 Commissioners: 20 Democrats; 20 Republicans; and 20 minority party,  
14 independent, or “decline to state” voters. Cal. Gov. Code § 8252(d). Leaders of the  
15 major parties in the state Legislature then reviewed the qualified applicants and  
16 struck a subset, further narrowing the field of eligible applicants. *Id.* § 8252(e).  
17 From this remaining pool, the State Auditor randomly selected three Democrats,  
18 three Republicans, and two voters unaffiliated with a major party to serve as the  
19 first eight Commissioners. *Id.* § 8252(f).

20           The first eight Commissioners reviewed the remaining pool of qualified  
21 applicants and appointed an additional six. The applicants were “chosen based on  
22 relevant analytical skills and ability to be impartial” as well as “to ensure the  
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24 \_\_\_\_\_  
25           <sup>2</sup> The Voters First Act, enacted by Proposition 11, is contained in Article  
XXI of the California Constitution and Government Code sections 8251 *et seq.*

26           <sup>3</sup> Citations to “RJN” are to the Commission’s concurrently filed Request for  
27 Judicial Notice. All record materials in the RJN were judicially noticed by the  
28 California Supreme Court in *Radanovich I*.

1 commission reflects this state’s diversity, including, but not limited to, racial,  
2 ethnic, geographic, and gender diversity.” Cal. Gov. Code § 8252(g).

3 The full Commission is comprised of five registered Republicans, five  
4 registered Democrats, and four registered voters unaffiliated with either major  
5 political party. Cal. Const. art. XXI, § 2(c)(2). The Commissioners are sworn to  
6 serve in a manner that is “impartial and that reinforces public confidence in the  
7 integrity of the redistricting process.” *Id.* § 2(c)(6).

8 Approval of final redistricting maps requires a supermajority of at least nine  
9 affirmative votes, which must include at least three votes of the Republican  
10 members, three votes of the Democratic members, and three votes of the  
11 unaffiliated members of the Commission. Cal. Const. art. XXI, § 2(b)(5).

12 **D. The Commission’s Open and Extensive Public**  
13 **Hearing and Map-Drawing Process.**

14 In reaction to the backroom redistricting process previously conducted by the  
15 Legislature, the California Constitution now requires “an open and transparent  
16 process enabling full public consideration of and comment on the drawing of  
17 district lines.” Cal. Const. art. XXI, § 2(b). The Commission took seriously its  
18 mandate to “establish and implement an open hearing process for public input” and  
19 to “solicit broad public participation” in redistricting. Cal. Gov. Code  
20 § 8253(a)(7). For example, as the Commission explained in *Radanovich I*:

21 i. The Commission solicited testimony through extensive public  
22 outreach involving mainstream and foreign-language media, the Commission’s  
23 website, social media, and through a long list of organizations (RJN at 2739-40);

24 ii. From the start of the redistricting process in January 2011 until  
25 August 2011, the Commission held 34 public input meetings in 32 locations across  
26 the state. Meetings were scheduled to be convenient for average citizens, and many  
27 extended hours longer than scheduled to accommodate speakers. More than 2,700  
28 people gave testimony or spoke at the public input hearings (RJN at 2739);

1           iii.     In addition, the Commission held more than 70 business  
2 meetings, during which the Commission regularly solicited public comment.  
3 All public meetings were broadcast live on the Commission’s website and archived  
4 for later public review (*id.*);

5           iv.     The Commission received and considered more than 2,000  
6 written submissions containing testimony or maps from groups and individuals,  
7 reflecting proposed statewide, regional or other districts. Alternative map  
8 submissions were posted on the Commission’s website (*id.*);<sup>4</sup>

9           v.     The Commission or its staff also reviewed more than 20,000  
10 written comments addressing the shared interests, backgrounds and histories of  
11 California’s communities, suggestions for district lines, and comments on the  
12 redistricting process generally (RJN at 2740);

13           vi.    The Commission received training and assistance from Q2 Data  
14 and Research, consultants with extensive experience with the computer programs  
15 used for line-drawing, to parse the U.S. Census data and use computer models and  
16 other programs needed for the complex, highly technical district line-drawing  
17 process. (*Id.*) The Commission also engaged Voting Rights Act legal counsel;

18           vii.   The Commission had full access to all demographic and other  
19 data that would have been available to the Legislature for use in redistricting,  
20 except they did not consider information about how the Commission’s maps would  
21 affect incumbent politicians, an issue that cannot be considered following passage  
22 of Proposition 11, *see* Cal. Const. art. XXI, § 2(e);

23           viii.   On June 10, 2011, following 23 public input hearings and  
24 dozens of public business meetings in which comments also were received, the  
25 Commission issued its first set of draft maps. The maps were posted on the  
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27           <sup>4</sup> *See also* <<http://wedrawthelines.ca.gov/map-submissions.html>>.  
28

1 Commission's website and covered widely in the media.<sup>5</sup> The Commission  
2 received public comments on the draft maps during 11 more input hearings and in  
3 hundreds of additional written submissions, and revised and honed the maps over  
4 the next several weeks (RJN at 2740);

5 ix. All of the Commission's public meetings and line-drawing  
6 sessions were broadcast live on the Commission's website, and video of those  
7 sessions is archived and available for public review. Transcripts of the  
8 Commission's meetings, its draft and final maps, and all documents presented to  
9 the Commission and suitable for posting also are available on the Commission's  
10 website for public review.<sup>6</sup>

11 **E. Certification of the Final Maps and Issuance of the**  
12 **Commission's Final Report.**

13 On July 29, 2011, the Commission released its preliminary final maps,  
14 together with a narrative explaining for the public's benefit the California  
15 Constitution's redistricting criteria and the Commission's public input process.<sup>7</sup>  
16 The maps were posted for further public comment. (*Id.*)

17 On August 15, 2011, the Commission certified the final maps to the  
18 Secretary of State. *See* Cal. Const. art. XXI, § 2(g). These maps were accompanied  
19 by the Commission's 67-page Final Report summarizing the Commission's work,  
20 the redistricting process, and the districts. (RJN at 2733-2899.) The California  
21 Secretary of State filed the maps the same day.

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25 <sup>5</sup> <<http://wedrawthelines.ca.gov/maps-first-drafts.html>>.

26 <sup>6</sup> <<http://wedrawthelines.ca.gov/transcripts.html>> and  
27 <<http://wedrawthelines.ca.gov/viewer.html>>.

28 <sup>7</sup> <<http://wedrawthelines.ca.gov/maps-preliminary-final-drafts.html>>.

1           **F. Plaintiffs File *Radanovich v. Bowen* in the California**  
2           **Supreme Court.**

3           On September 29, 2011, Plaintiffs filed their petition in the California  
4 Supreme Court, alleging that the Commission's certified U.S. Congressional  
5 districts violated the 14th Amendment and Sections 2 and 5 of the Voting Rights  
6 Act, as incorporated in Article XXI of the California Constitution, among other  
7 purported violations of the California Constitution. (RJN Ex. A.) The petition was  
8 supported by a four-volume Request for Judicial Notice and a declaration by  
9 Radanovich's proffered expert, T. Anthony Quinn. (RJN Exs. B-C.) The court  
10 requested responses from the Commission and Secretary of State. (RJN Ex. D.)

11           On October 7, Plaintiffs filed a supplemental declaration from Anthony  
12 Quinn and a supplemental Request for Judicial Notice. (RJN Exs. E-F.)

13           On October 11, the Commission filed its Consolidated Preliminary  
14 Opposition and a four-volume Request for Judicial Notice. (RJN Exs. G-H.)<sup>8</sup>  
15 Radanovich filed a 19-page reply brief on October 17. (RJN Ex. I.)

16           **G. The California Supreme Court, Exercising "Original**  
17           **and Exclusive Jurisdiction," Denies Plaintiffs'**  
18           **Challenges to the Commission's Certified Final Maps.**

19           On October 26, 2011, pursuant to Article XXI, section 3 of the California  
20 Constitution, the California Supreme Court issued an order (1) granting the parties'  
21 Requests for Judicial Notice, (2) denying the Commission's motion to strike the  
22 declarations of T. Anthony Quinn, and (3) denying Radanovich's petition  
23 challenging the Commission's certified U.S. Congressional districts. (RJN Ex. J.)  
24 All seven justices participated in the court's action. (*Id.*)

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26  
27           <sup>8</sup> *Radanovich I* was consolidated with *Vandermost v. Bowen*, No. S196493,  
28 which challenged the Commission's certified state Senate districts.



1 Plaintiffs did not seek further relief in the California Supreme Court or  
 2 certiorari from the United States Supreme Court. Instead, on November 23, 2011,  
 3 they filed their lawsuit here. (Dkt. 1.)

4 **III. ALL CLAIMS ARE BARRED BY RES JUDICATA BECAUSE**  
 5 **THE CALIFORNIA SUPREME COURT CONSIDERED AND**  
 6 **REJECTED ON THE MERITS VIRTUALLY IDENTICAL**  
 7 **CLAIMS BY THESE SAME PLAINTIFFS.**

8 **A. Applicable Legal Standards: The Res Judicata Effect**  
 9 **of State Court Decisions.**

10 Under res judicata, “a final judgment on the merits of an action precludes the  
 11 parties or their privies from relitigating issues that were or could have been raised  
 12 in that action.” *Manufactured Home Cmty., Inc. v. City of San Jose*, 420 F.3d  
 13 1022, 1031 (9th Cir. 2005) (quoting *Allen v. McCurry*, 449 U.S. 90, 94 (1980)).

14 This Court applies California law to decide the preclusive effect of a  
 15 California decision, giving “the same res judicata effect to state court judgments  
 16 that the jurisdiction of their rendition would give them.” *Eichman v. Fotomat*  
 17 *Corp.*, 759 F.2d 1434, 1438 (9th Cir. 1985); *see also* 28 U.S.C. § 1738 (federal  
 18 courts give full faith and credit to state court proceedings); *Henrichs v. Valley View*  
 19 *Dev.*, 474 F.3d 609, 615 (9th Cir. 2010) (“To determine the preclusive effect of a  
 20 state court judgment, we look to state law.”).

21 “In California, ‘[r]es judicata, or claim preclusion, prevents relitigation of the  
 22 same cause of action in a second suit between the same parties or parties in privity  
 23 with them.’” *Henrichs*, 474 F.3d at 615 (quoting *Mycogen Corp. v. Monsanto Co.*,  
 24 28 Cal. 4th 888, 896 (2002)). California applies the “primary rights” doctrine to  
 25 determine whether a claim is part of the “same cause of action” and thus barred by  
 26 res judicata. Specifically, the primary rights doctrine:

27 Provides that a “cause of action” is comprised of a  
 28 “primary right” of the plaintiff, a corresponding “primary  
 duty” of the defendant, and a wrongful act by the defendant  
 constituting a breach of that duty. The most salient  
 characteristic of a primary right is that it is indivisible: the

1 violation of a single primary right gives rise to but a single  
2 cause of action. . . . Claims not raised in this single cause  
3 of action may not be raised at a later date.

4 *Manufactured Home*, 420 F.3d at 1031 (citing and quoting *Mycogen*, 28 Cal. 4th  
5 at 904); accord *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1035 (9th Cir. 1990)  
6 (explaining that “where a federal constitutional claim is based on the same asserted  
7 wrong as a state action and the parties are the same, res judicata will bar the federal  
8 constitutional claim, whether or not it was asserted specifically in state court”).

9 As the following sections explain, all elements of res judicata are satisfied  
10 here, and Plaintiffs’ complaint should be dismissed in its entirety.

11 **B. The California Supreme Court Action, *Radanovich v.***  
12 ***Bowen*, Resulted in “a Final Judgment on the Merits.”**

13 The California Supreme Court considered and rejected on the merits  
14 Plaintiffs’ virtually identical lawsuit, based on that court’s “original and exclusive  
15 jurisdiction in all proceedings in which a certified final map is challenged or is  
16 claimed not to have taken timely effect.” Cal. Const. art. XXI, § 3(b)(1).

17 In the context of proceedings involving a state appellate court’s “original and  
18 exclusive jurisdiction,” even the summary denial of a petition for writ of mandate is  
19 a final judgment on the merits. *In re Rose*, 22 Cal. 4th 430, explained:

20 An order summarily denying a petition for writ of mandate  
21 or prohibition generally reflects a discretionary refusal to  
22 exercise original jurisdiction over a matter that properly  
23 may be pursued in the lower courts. . . . When the sole  
24 means of review is a petition in this court, however, our  
25 denial of the petition -- with or without an opinion --  
26 reflects a judicial determination on the merits.

27 *Id.* at 445-46 (holding that California Supreme Court’s summary denial of a petition  
28 for review of a recommendation of attorney disbarment, over which the supreme  
court had original jurisdiction, was a final decision on the merits even though the  
court did not schedule argument or issue a written decision).

1 Additional controlling authority makes clear that the California Supreme  
2 Court’s rejection of Plaintiffs’ claims is a final judgment for purposes of  
3 res judicata. *See, e.g., Napa Valley Elec.*, 251 U.S. at 373 (where California  
4 Supreme Court had original and exclusive jurisdiction pursuant to a constitutional  
5 grant of authority, denial of a state court petition barred subsequent federal court  
6 litigation: “the denial of the petition was necessarily a final judicial determination,  
7 . . . [and] is as effectual as an estoppel as would have been a formal judgment upon  
8 issues of fact”); *Pacific Tel. & Tel. Co. v. Public Utilities Com.*, 600 F.2d 1309,  
9 1312 (9th Cir. 1979) (confirming that *Napa Valley* remains the law in the Ninth  
10 Circuit); *Geibel v. State Bar of Cal.*, 14 Cal. 2d 144, 148 (1939) (in an original  
11 proceeding in the California Supreme Court, “[t]he action of this court taken by  
12 means of an order of denial is res judicata although no written opinion is filed”);  
13 *cf., Funeral Directors Assoc. v. Bd. of Funeral Directors & Embalmers*, 22 Cal. 2d  
14 104 (1943) (explaining the *Napa Valley* line of authority, which applies where the  
15 state supreme court has original and exclusive jurisdiction).

16 Here, the California Supreme Court received substantial briefing and  
17 evidence from both sides—including, e.g., Plaintiffs’ 64-page petition, their four-  
18 volume Request for Judicial Notice and supporting declarations from their  
19 proffered expert. (RJN Exs. A-C, E, F, I.) The court granted Plaintiffs’ Request for  
20 Judicial Notice, considered their brief and declarations on their merits, and  
21 unanimously rejected Plaintiffs’ claims. (RJN Ex. J; *see also* RJN Ex. K [“All  
22 seven justices participated in the court’s action.”].) The Supreme Court action thus  
23 ended with a final determination on the merits for purposes of res judicata.

24 **C. The California Supreme Court Action Involved the Same**  
25 **Claims and the Same “Primary Right” Asserted in This Case.**

26 Plaintiffs’ prior action and this lawsuit assert the same claims and are based  
27 on the same “primary right” to vote in constitutional Congressional districts: The  
28 lynchpin of both lawsuits is the erroneous assertion that the Commission’s districts

1 “have resulted in depriving African-American, Latino and Asian voters the  
2 opportunity to elect candidates of choice.” (RJN Ex. A at ¶ 1; Compl. ¶ 1.)

3 Both actions allege violations of the 14th Amendment and Sections 2 and 5  
4 of the Voting Rights Act caused by the Commission’s work—and, because the  
5 pleadings were prepared by the same lawyers on behalf of the same Plaintiffs, they  
6 contain virtually identical allegations. (*Compare, e.g.*, RJN Ex. A at ¶¶ 1, 5-7, 9-  
7 11, 21, 24-39 and RJN Ex. A at pp. 48-59 with Compl. ¶¶ 1, 8-28, 36-50.)<sup>9</sup> Indeed,  
8 Radanovich’s state-court lawsuit challenged the very same Congressional districts  
9 (numbers 37, 43 and 44) at issue here. (RJN Ex. A at ¶ 1; Compl. ¶ 1.)<sup>10</sup>

10 The only arguable difference between *Radanovich I* and this lawsuit (other  
11 than the forum) is the framing of the claims: In the California Supreme Court,  
12 Plaintiffs alleged that the Commission violated the California Constitution by  
13 failing to abide by Sections 2 and 5 of the federal Voting Rights Act (which are  
14 incorporated by reference in Article XXI of the state Constitution). (RJN at 48-54.)  
15 Here, they assert claims directly under Sections 2 and 5. (Compl. ¶¶ 41-50.) As the  
16 Ninth Circuit has explained, where, as here, “a federal constitutional claim is based  
17 on the same asserted wrong as a state action and the parties are the same, res  
18 judicata will bar the federal constitutional claim, whether or not it was asserted  
19 specifically in state court.” *Sanchez*, 936 F.2d at 1035.

20 Indeed, because both lawsuits involve the same “primary right”—the right to  
21 vote in constitutional districts—res judicata bars *all claims that were or could have*  
22 *been asserted* in the state court action. *See, e.g., Mycogen*, 28 Cal. 4th at 904 (“the

23 \_\_\_\_\_  
24 <sup>9</sup> Citations to page numbers within the RJN are to the consecutively  
25 numbered pages.

26 <sup>10</sup> Radanovich’s California Supreme Court action also sought the same relief  
27 as the current lawsuit: Plaintiffs want to replace the Commission’s certified  
28 maps—which were prepared pursuant to the extraordinary, open and transparent  
process mandated by Article XXI of the California Constitution—with maps drawn  
by special masters. (*Compare* RJN Ex. A at 31 and Compl., “Prayer for Relief.”)

1 primary right is simply the plaintiff’s right to be free from the particular injury  
2 suffered . . . [e]ven where there are multiple legal theories upon which recovery  
3 might be predicated, one injury gives rise to only one claim for relief”); *Bay Cities*  
4 *Paving & Grading v. Lawyers’ Mutual Ins. Co.*, 5 Cal. 4th 854, 860 (1993)  
5 (plaintiff had a single primary right to be free from negligence of its attorneys; a  
6 second claim alleging different breach of duty was based on the same primary  
7 right); *Slater v. Blackwood*, 15 Cal. 3d 791, 795 (1975) (plaintiff had a single  
8 primary right “to be free from injury to her person”); *Silverado Modjeska*  
9 *Recreation & Park Dist. v. Cty. of Orange*, 197 Cal. App. 4th 282, 298 (2011) (in a  
10 CEQA action, the right to ensure an agency’s compliance with all applicable  
11 “substantive and procedural requirements” is a single primary right).<sup>11</sup>

12 **D. The California Supreme Court Action Involved the Same**  
13 **Parties as in This Case.**

14 The final element for res judicata also is satisfied: This action involves the  
15 same parties as the California Supreme Court action. (RJN Ex. A.)

16 Accordingly, this action should be dismissed in its entirety based on  
17 res judicata.

18  
19  
20  
21 <sup>11</sup> Voting Rights Act claims are subject to res judicata like any other claim,  
22 as abundant authority demonstrates. *See, e.g., Smith v. Commonwealth of Virginia*,  
23 2011 U.S. Dist. LEXIS 38553, at \*9-10 (E. D. Va. Apr. 8, 2011) (res judicata  
24 applies in the VRA context); *Jackson v. Waller Indep. Sch. Dist.*, 2008 U.S. Dist.  
25 LEXIS 22923, at \*34-35 (S.D. Tex. Mar. 24, 2008) (Voting Rights Act claims  
26 barred by res judicata where first pursued unsuccessfully in state court); *Nolles v.*  
27 *State Comm. for the Reorganization of School Districts*, 2006 U.S. Dist. LEXIS  
28 84466, at \*8, 14 (N. Neb. Nov. 20, 2006) (same); *Robertson v. Bartels*, 148 F.  
Supp. 2d 443, 448 (D. N.J. 2001) (successive federal court VRA challenges to New  
Jersey redistricting commission’s maps were barred by res judicata); *Warden v.*  
*Pataki*, 35 F. Supp. 2d 354, 357 n.1 (S.D.N.Y. 1999) (successive federal court  
challenges under VRA barred by res judicata); *Dillard v. Crenshaw County*, 640 F.  
Supp. 1347 (M.D. Ala. 1986) (same).

1 **IV. PLAINTIFFS’ THIRD CLAIM FOR RELIEF FAILS FOR THE**  
 2 **ADDITIONAL REASON THAT PLAINTIFFS HAVE NOT**  
 3 **PLEADED FACTS THAT SUPPORT A CLAIM UNDER**  
 4 **SECTION 5 OF THE VOTING RIGHTS ACT.**

5 **A. Plaintiffs Have Pleaded No Facts to Support the Claim.**

6 Post-*Twombly*, Plaintiffs must allege “sufficient factual matter, accepted as  
 7 true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct.  
 8 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).  
 9 “A claim has facial plausibility when the plaintiff pleads factual content that allows  
 10 the court to draw the reasonable inference that the defendant is liable for the  
 11 misconduct alleged.” *Id.* “A pleading that offers ‘labels and conclusions’ or ‘a  
 12 formulaic recitation of the elements of a cause of action will not do’... Nor does a  
 13 complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual  
 14 enhancement.’” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555, 557).

15 The Third Claim for Relief contains *no* factual content—it merely alleges  
 16 without elaboration that the Commission’s certified Congressional districts are  
 17 “retrogressive and if adopted would limit Latino opportunity districts and therefore  
 18 is unlikely to be approved” by the U.S. Department of Justice. (Compl. ¶ 50.)  
 19 This barebones recitation does not satisfy *Twombly* and *Iqbal*’s standard.

20 **B. Plaintiffs Could Not Plead Facts to State a Claim**  
 21 **Under Section 5 of the Voting Rights Act Because the Districts**  
 22 **at Issue Are Not “Covered Jurisdictions” Under Section 5.**

23 Plaintiffs could not plead a claim under Section 5 of the Voting Rights Act in  
 24 any event, and the inclusion of this claim makes no sense in the context of their  
 25 lawsuit. *Iqbal*, 129 S. Ct. at 1949 (a claim must have “facial plausibility”).  
 26 Section 5 only applies to “covered jurisdictions”—which, in California, are four  
 27 counties: Kings, Monterey, Merced, and Yuba. *See* 42 U.S.C. § 1973b(b).<sup>12</sup>

28 <sup>12</sup> Kings and Merced Counties were designated covered jurisdictions subject  
 to Section 5 of the Voting Rights Act on September 23, 1975. *See* 40 Fed. Reg.  
 43746 (Sep. 23, 1975). Monterey and Yuba Counties were designated covered

(Footnote continues on next page.)

1 Section 5 requires that, *in these counties* only, a redistricting plan cannot reduce the  
2 percentage of citizens of voting age that belong to a protected minority group below  
3 specified “benchmark” levels. *Wilson v. Eu*, 1 Cal. 4th 707, 716 (1992) (noting the  
4 “special steps” needed to “assure such compliance with respect to the four  
5 California counties (Kings, Merced, Monterey and Yuba) subject to the  
6 ‘preclearance’ provisions of section 5 of the Voting Rights Act”). Simply put,  
7 *Section 5 does not apply to Los Angeles County* or to the three Los Angeles-area  
8 Congressional districts challenged by Plaintiffs.

9 For these additional reasons, the Third Claim for Relief should be dismissed.

10 **V. CONCLUSION**

11 For all these reasons, Plaintiffs’ lawsuit is fatally defective and should be  
12 dismissed without leave to amend. The Commission should recover its attorneys’  
13 fees and costs incurred pursuant to 42 U.S.C. §§ 1973L(e) and 1988(b).

14  
15 Dated: January 12, 2012

Respectfully submitted,  
MORRISON & FOERSTER LLP

17  
18 By: /s/ James J. Brosnahan  
James J. Brosnahan

19 Attorneys for Defendant  
20 CITIZENS REDISTRICTING  
21 COMMISSION

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23  
24  
25  
26 \_\_\_\_\_  
(Footnote continued from previous page.)

27 jurisdictions on March 27, 1971. *See* 36 Fed. Reg. 5809 (Mar. 27, 1971).  
28 Los Angeles is not and has never been a covered jurisdiction under Section 5.