



**CARL GORDON**  
**UNIVERSITY OF THE 'HOOD®**  
8306 Wilshire Blvd., No. 792  
Beverly Hills, CA 90211  
Tel. (310) 926-3939  
Email: [universityofthehood@gmail.com](mailto:universityofthehood@gmail.com)  
Plaintiff Pro Se, Carl Gordon

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

**CARL GORDON,**  
Plaintiff,  
  
v.  
**GAVIN NEWSOM,** Governor of  
California;  
  
**ELENI KOUNALAKIS,** Lieutenant  
Governor of California;  
  
**ROB BONTA,** Attorney General of  
California;  
  
**SHIRLEY N. WEBER,** Secretary of  
State of California;  
  
**STEVEN J. REYES,** Chief Counsel to  
the Secretary of State;  
  
**DOES 1–10,**  
  
DEFENDANTS.

CASE No: 2:25-cv-12427-SVW-MAA

**PLAINTIFF’S EMERGENCY  
OPPOSITION TO DEFENDANTS’  
MOTION TO DISMISS  
PLAINTIFF’S FIRST AMENDED  
COMPLAINT**

**SUPPORTED BY  
  
EMERGENCY NOTICE  
REGARDING PRIOR  
UNDOCKETED FILINGS**

**AND REQUEST FOR EXPEDITED  
CONSIDERATION**

1 **TABLE OF CONTENTS**

2  
3 EMERGENCY NOTICE REGARDING PRIOR UNDOCKETED FILINGS  
4 AND REQUEST FOR EXPEDITED CONSIDERATION

5 I. INTRODUCTION

6 II. DEFENDANTS’ INTRODUCTION MISCHARACTERIZES THE  
7 PRESENT CASE

8 III. BACKGROUND SECTION: DEFENDANTS’ HISTORY NARRATIVE IS  
9 INCOMPLETE AND LEGALLY OVERSTATED

10 IV. ARGUMENT I — STANDING

11 V. ARGUMENT II.A — CLAIM PRECLUSION

12 VI. ARGUMENT II.B — ISSUE PRECLUSION

13 VII. ARGUMENT II.C — ELEVENTH AMENDMENT

14 VIII. ARGUMENT III — FAILURE TO STATE A CLAIM

15 IX. ARGUMENT IV — DISMISSAL WITH PREJUDICE

16 X. PROCEDURAL SEQUENCING OBJECTION

17 XI. CONCLUSION  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **TABLE OF AUTHORITIES**

2  
3 Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320 (2015) (Supremacy  
4 Clause does not itself create a private cause of action)

5 Foman v. Davis, 371 U.S. 178, 182 (1962) (leave to amend should be freely  
6 granted absent undue delay, bad faith, or futility)

7 Lacey v. Maricopa County, 693 F.3d 896, 927 (9th Cir. 2012) (en banc) (an  
8 amended complaint supersedes the prior pleading and renders it without legal  
9 effect)

10 Lance v. Coffman, 549 U.S. 437 (2007) (generalized grievance doctrine)

11 Drake v. Obama, 664 F.3d 774 (9th Cir. 2011) (standing requires a concrete and  
12 particularized injury)

13 Lake v. Cameron, 364 F.2d 657 (D.C. Cir. 1966) (standing requires a personal  
14 stake in the outcome)

15 Shapiro v. McManus, 577 U.S. 39 (2015) (three-judge court must be convened  
16 when a constitutional challenge to statewide legislative enactments is not wholly  
17 insubstantial)

18 Ex parte Young, 209 U.S. 123 (1908) (prospective injunctive relief against state  
19 officials is not barred by the Eleventh Amendment)

20 28 U.S.C. § 2201 (Declaratory Judgment Act)

21 28 U.S.C. § 2284 (three-judge court statute)

22 Fed. R. Civ. P. 12(b)(1) (motion to dismiss for lack of jurisdiction)

23 Fed. R. Civ. P. 12(b)(6) (motion to dismiss for failure to state a claim)

24 Fed. R. Civ. P. 15(a)(2) (leave to amend should be freely granted)

1 **EMERGENCY NOTICE REGARDING PRIOR UNDOCKETED FILINGS**  
2 **AND REQUEST FOR EXPEDITED CONSIDERATION**

3  
4 Plaintiff Carl Gordon respectfully submits this Emergency Notice to advise the  
5 Court of a procedural matter affecting the record in related proceedings. On  
6 March 2, 2026, Plaintiff submitted filings through the Court’s electronic  
7 submission procedures in the related action, *Gordon v. Newsom*, Case No. 2:21-  
8 cv-07270-FMO-MAR, including:

- 9  
10 • Plaintiff’s Notice of Motion and Motion to Vacate Judgment as Void pursuant  
11 to Federal Rule of Civil Procedure 60(b)(4);  
12 • Plaintiff’s Request for Judicial Notice in Support of that Motion; and  
13 • [Proposed] Order Granting Plaintiff’s Motion to Vacate Judgment as Void.

14 Although submission confirmation was received, those filings have not yet  
15 appeared on the public docket. Plaintiff recognizes that filings submitted through  
16 the Court’s electronic submission system may require processing and review  
17 before appearing on the docket, particularly *despite the hard work of the*  
18 *understaffed Clerk’s Office*.

19  
20 The March 2 filings challenge the validity of the judgment entered in *Gordon v.*  
21 *Newsom* (“Gordon I”) on the ground that the judgment is void. A void judgment  
22 may be challenged at any time and presents a jurisdictional issue affecting the  
23 authority of a court to rely upon that judgment.

24  
25 Because a void judgment is a legal nullity, any subsequent reliance upon that  
26 judgment raises a threshold issue concerning the validity of downstream rulings.

1 The issue is directly relevant to the present case because the Court’s January 13,  
2 2026 order relied upon the prior decision in *Gordon I*. Accordingly, the validity  
3 of the *Gordon I* judgment bears directly on the legal framework underlying the  
4 present proceedings.

5  
6 Plaintiff respectfully provides this notice to ensure the Court is aware of the  
7 procedural posture of the related proceedings while the March 2 filings are  
8 awaiting docketing. Plaintiff further intends to confer with Defendants regarding  
9 a possible stipulation for an order shortening time or other expedited scheduling  
10 order so that the Court may address the jurisdictional issues presented in an  
11 orderly manner.

## 12 13 **I. INTRODUCTION**

14 Defendants’ motion to dismiss should be denied because it proceeds out of  
15 sequence, mischaracterizes the pleading, and ignores the governing procedural  
16 posture of this case. Defendants ask the Court to dismiss the First Amended  
17 Complaint with prejudice while Plaintiff’s motion for leave to file a Second  
18 Amended Complaint remains pending, despite Federal Rule of Civil Procedure  
19 15(a)(2)’s directive that leave to amend should be freely granted when justice so  
20 requires. Courts routinely deny dismissal with prejudice where amendment  
21 remains pending and the operative pleading may change.

22  
23 Defendants also disregard Plaintiff’s Notice of Procedural Preservation, Record  
24 Sequencing, and Request for Orderly Adjudication, together with Plaintiff’s  
25 Requests for Judicial Notice, which placed before the Court a threshold structural  
26 sequencing issue tied to Plaintiff’s March 2, 2026 Motion to Vacate Judgment as  
27

1 Void pursuant to Federal Rule of Civil Procedure 60(b)(4) in *Gordon v. Newsom*,  
2 Case No. 2:21-cv-07270-FMO-MAR (“Gordon I”). Plaintiff’s March 3, 2026  
3 Request for Judicial Notice expressly explains that the purpose of that filing is to  
4 ensure the record reflects the existence of the pending Rule 60(b)(4) motion and  
5 the jurisdictional consequences that follow if the underlying judgment relied  
6 upon by Defendants is void. A void judgment is a legal nullity and cannot  
7 support dismissal with prejudice in a related proceeding.  
8

9 Defendants’ motion further ignores the statutory sequencing issue presented by  
10 Plaintiff’s challenge to statewide legislative enactments governing congressional  
11 representation. The case arises from the coordinated legislative framework  
12 adopted in connection with the November 4 special election and presented to  
13 California voters as Proposition 50. The Legislature enacted Assembly  
14 Constitutional Amendment 8 (“ACA 8”), Resolution Chapter 156, Statutes of  
15 2025, proposing a constitutional amendment authorizing immediate  
16 congressional redistricting for the 2026 election cycle; Senate Bill 280 (“SB  
17 280”), which called the special election and assigned the proposition number; and  
18 Assembly Bill 604 (“AB 604”), which assigned census blocks within the counties  
19 to newly created congressional districts. These enactments collectively establish  
20 the statewide legislative structure governing congressional districts for elections  
21 to the United States House of Representatives.  
22

23 Because this action challenges the implementation and operation of those  
24 statewide legislative enactments affecting congressional representation, the case  
25 falls squarely within the mandatory three-judge court requirement of 28 U.S.C. §  
26 2284. See *Shapiro v. McManus*, 577 U.S. 39, 44–45 (2015). A single district  
27  
28

1 judge may not resolve the merits of such claims unless the constitutional  
2 challenge is wholly insubstantial, a circumstance not present here.

3  
4 The statutory framework at issue is further implemented through election-  
5 administration measures including Assembly Bill 2037, which authorizes the use  
6 of certain commercial establishments as polling locations, including venues  
7 where alcohol is served. Election infrastructure used to administer those polling  
8 locations has been supported through federal election funding programs,  
9 including funds provided under the Help America Vote Act (“HAVA”). Federal  
10 funding of election infrastructure is governed by federal cost principles that  
11 prohibit expenditures connected to alcoholic-beverage activities. See 2 C.F.R. §  
12 200.423. Where federal election funds are used to support polling locations  
13 situated within establishments whose primary business involves the service of  
14 alcohol, federal law governs the permissible use of those funds.

15  
16 Under the Supremacy Clause of the United States Constitution, federal law  
17 controls when state election enactments conflict with federal statutory and  
18 regulatory restrictions governing the use of federal funds. U.S. Const. art. VI, cl.  
19 2. Accordingly, the statewide election framework established through ACA 8, SB  
20 280, AB 604, and related implementing legislation including AB 2037 presents  
21 constitutional questions concerning the interaction between federally funded  
22 election administration and state law governing congressional elections.

23  
24 Defendants’ brief is therefore overbroad and incorrect in framing this action as  
25 merely another challenge to the 2021 recall election. The present case addresses  
26 the federally funded implementation of a statewide redistricting and election  
27

1 framework governing congressional representation beginning with the 2026  
2 election cycle. Those issues arise from distinct statutes, distinct elections, and  
3 distinct constitutional questions.

4  
5 For these reasons—together with the pending motion to amend, the preserved  
6 Rule 60(b)(4) jurisdictional issue, and the mandatory three-judge court  
7 requirement under 28 U.S.C. § 2284—Defendants’ request for dismissal with  
8 prejudice is procedurally improper and should be denied.

9  
10 **II. DEFENDANTS’ INTRODUCTION MISCHARACTERIZES THE**  
11 **PRESENT CASE**

- 12  
13 1. Defendants begin by framing this action as merely the “latest chapter” in  
14 prior litigation and as another challenge to “lawful elections in California.”  
15 That framing is incorrect and does not address the actual legal issues  
16 presented in this case. The controlling question is whether the claims, facts,  
17 requested relief, and operative legal issues in this action are identical to  
18 those previously adjudicated. They are not. The present case challenges a  
19 distinct statutory and constitutional framework governing federally funded  
20 election administration and congressional districting beginning with the  
21 2026 election cycle.
- 22 2. Defendants assert that Plaintiff challenges Proposition 50 on the ground  
23 that Assembly Bill 2037 conflicts with federal law governing unallowable  
24 alcohol-related costs and attempt to characterize the action as a repetition  
25 of prior theories. That characterization misstates the complaint. The  
26 pleading sets forth a specific statutory and constitutional conflict between  
27  
28

1 the statewide election framework enacted through Proposition 50 and its  
2 implementing legislation and federal law governing the use of federally  
3 funded election infrastructure. A motion to dismiss must address the theory  
4 actually pleaded in the complaint, not a recharacterization of it.

- 5 3. Defendants’ introduction also omits the current procedural posture of the  
6 case. Plaintiff filed a motion for leave to file a Second Amended  
7 Complaint on February 18, 2026, and lodged the proposed amended  
8 pleading the same day. Federal Rule of Civil Procedure 15(a)(2) provides  
9 that leave to amend should be freely granted when justice so requires. If  
10 leave is granted, the Second Amended Complaint will supersede the First  
11 Amended Complaint and become the operative pleading, rendering  
12 Defendants’ present motion directed to the earlier pleading moot.  
13

14 **III. BACKGROUND SECTION: DEFENDANTS’ HISTORY NARRATIVE**  
15 **IS INCOMPLETE AND LEGALLY OVERSTATED**  
16

- 17 4. Defendants devote a substantial portion of their brief to a chronology of  
18 Plaintiff’s prior lawsuits. That narrative is incomplete because it omits the  
19 present procedural posture of the referenced matters. Several of the  
20 proceedings Defendants cite remain pending on appeal or otherwise  
21 actively disputed. In addition, Plaintiff has filed a motion pursuant to  
22 Federal Rule of Civil Procedure 60(b)(4) in *Gordon v. Newsom*, Case No.  
23 2:21-cv-07270-FMO-MAR, challenging the validity of the judgment on  
24 which Defendants rely.  
25 5. Defendants’ background section also advances legal conclusions rather  
26 than neutral procedural facts. The brief repeatedly characterizes the  
27  
28

1 elections at issue as “lawful,” describes prior rulings as having “repeatedly  
2 rejected” Plaintiff’s theories, and refers to an asserted “conspiracy.” Those  
3 characterizations are advocacy positions contained in Defendants’ motion  
4 rather than background facts establishing the procedural posture of the  
5 present case.

- 6 6. Defendants also treat multiple distinct legal frameworks as though they  
7 were identical. Their narrative collapses expired statutes, current statutes,  
8 recall-era enactments, the legislative framework implementing Proposition  
9 50, and federal election-funding restrictions into a single description of  
10 prior litigation. The present case concerns the interaction between  
11 statewide election enactments governing congressional representation and  
12 federal law governing the use of federally funded election infrastructure,  
13 issues that arise from a distinct statutory framework and a distinct election  
14 cycle.  
15

16 **IV. ARGUMENT I — STANDING**  
17

- 18 7. Defendants argue that Plaintiff lacks standing on the ground that he asserts  
19 only a generalized grievance as a voter. That characterization misstates the  
20 complaint. Defendants themselves acknowledge that Plaintiff asserts  
21 standing not only as a voter but also as a **fee-paying prospective**  
22 **replacement candidate in the 2021 California gubernatorial recall**  
23 **election.**

- 24 8. Plaintiff sustained concrete injuries, including the loss of candidacy  
25 opportunity, loss of the economic value of the filing fee, injury to the  
26 integrity of the electoral process in which Plaintiff participated as a  
27

1 potential replacement candidate, and continued exposure to an unlawful  
2 election framework. These injuries are neither speculative nor abstract.  
3 They arise from specific statutory and constitutional violations that  
4 affected Plaintiff personally and continue to impose legal consequences.  
5 Claims seeking nominal damages for completed constitutional injuries  
6 independently preserve Article III jurisdiction even after an election has  
7 concluded.<sup>1</sup>

8  
9 9. When evaluating a **Rule 12(b)(1) facial challenge**, the Court accepts the  
10 complaint’s factual allegations as true and draws reasonable inferences in  
11 Plaintiff’s favor.

12 10. Defendants’ reliance on generalized-grievance cases does not resolve this  
13 case because Plaintiff asserts a distinct personal stake arising from prior  
14 candidate status and the payment of a statutory filing fee required to  
15 participate in the recall election.

16 11. At minimum, standing disputes do not justify dismissal with prejudice  
17 where amendment may clarify additional factual allegations supporting  
18 jurisdiction.

19  
20  
21  
22  
23  
24 <sup>1</sup> The Ninth Circuit has held that recall-related challenges are not rendered moot after the election where the  
25 plaintiff alleges a completed injury and seeks nominal damages. See *Clark v. Weber*, 68 F.4th 678, 681–82 (9th  
26 Cir. 2022) (“Clark adequately alleged a completed injury—namely, his inability to vote for Governor Newsom on  
27 question two during the recall election—that is fairly traceable to the California election procedures he challenges.  
Because an award of nominal damages would redress that injury, this case is not moot.”) (citing *Uzuegbunam v.*  
*Preczewski*, 141 S. Ct. 792, 801–02 (2021); *Shoshone-Bannock Tribes v. Fish & Game Comm’n*, 42 F.3d 1278,  
1284 (9th Cir. 1994)).

1 **V. ARGUMENT II.A — CLAIM PRECLUSION**

2  
3 12. Claim preclusion requires the same claim, a final judgment on the merits,  
4 and identity of parties or privies.

5 13. Defendants’ argument fails at the first step because this case challenges  
6 Proposition 50 implementation and later statutes including AB 2037.

7 14. Related Gordon cases involves later statutes, a different election cycle, and  
8 a federal-funding conflict theory tied to present election administration.

9 15. Defendants rely heavily on related Gordon cases even though the cases  
10 remains on appeal.

11 16. Even where prior litigation addressed similar subject matter, claim  
12 preclusion does not bar new claims based on later acts and statutes.

13 17. Evidence concerning Proposition 50 implementation and federal funding  
14 differs materially from evidence in recall-era cases.

15 18. Claim preclusion therefore cannot support dismissal with prejudice at this  
16 stage.

17  
18 **VI. ARGUMENT II.B — ISSUE PRECLUSION**

19  
20 19. Defendants’ issue-preclusion argument fails for similar reasons. Issue  
21 preclusion requires that the identical issue was actually litigated and  
22 necessarily decided. Defendants have not shown that the exact issues  
23 presented here — including Proposition 50, AB 2037, current federally  
24 funded implementation, and prospective redistricting-related relief — were  
25 actually and necessarily decided in prior cases.  
26  
27  
28

1 20. Defendants attempt to reduce everything to one “same legal theory” about  
2 gubernatorial disability. But Plaintiff’s present complaint alleges both a  
3 recall-trigger theory under Article II, section 17, and a separate  
4 conflict/disability theory tied to Article V, section 10, federal funding  
5 consequences, and current election implementation. That combination is  
6 broader than Defendants’ summary.

7 21. Defendants also say Plaintiff had a “full and fair opportunity” to litigate  
8 these issues in Gordon I. But Plaintiff has now put before this Court a  
9 pending Rule 60(b)(4) challenge asserting that the instant case itself  
10 involved a structural jurisdictional defect under 28 U.S.C. § 2284. If the  
11 prior adjudication is itself being challenged as void, Defendants cannot  
12 simply assume it as an unquestionable issue-preclusion foundation.

13 22. Accordingly, the Court should not use issue preclusion to foreclose  
14 amendment where Plaintiff has already moved for leave to file a Second  
15 Amended Complaint and has preserved the sequencing issue through  
16 separate filings.

17  
18 **VII. ARGUMENT ILC — ELEVENTH AMENDMENT**  
19

20 23. Defendants next argue that the Eleventh Amendment bars Plaintiff’s  
21 official-capacity claims. That argument is overbroad because Plaintiff  
22 expressly pleads prospective declaratory and injunctive relief and invokes  
23 Ex parte Young. Defendants acknowledge that Plaintiff seeks prospective  
24 relief only.

25 24. Defendants try to recast the complaint as retrospective because Plaintiff  
26 seeks to enjoin administration of redistricting processes “pursuant to  
27

1 Proposition 50.” But that is not relief aimed solely at undoing a past  
2 election result. It is relief directed at ongoing and future implementation of  
3 an allegedly unlawful framework. Ex parte Young exists precisely for  
4 prospective relief against ongoing enforcement or implementation of  
5 allegedly unlawful state action.

6 25. Defendants’ reliance on Bowyer is not dispositive because Plaintiff is not  
7 merely seeking “decertification” of a completed election. He challenges  
8 ongoing administration and future consequences flowing from the  
9 framework established by Proposition 50 and its enabling legislation.

10 26. Defendants separately invoke Pennhurst to bar Plaintiff’s ultra vires claim  
11 insofar as it relies on the California Constitution. That overstates  
12 Pennhurst. Plaintiff’s complaint does not invoke state-law disability  
13 theories in a vacuum; it pleads them as part of a larger federal Supremacy  
14 Clause, preemption, and prospective-relief challenge to the use of federally  
15 funded election administration under an allegedly invalid state-law  
16 framework.

17 27. Any determination that a portion of the ultra vires theory arises under state  
18 law would warrant, at most, narrowing of the claims or amendment of the  
19 pleading—not dismissal of the entire action with prejudice. dismissal of  
20 the entire action with prejudice.  
21

1 **VIII. ARGUMENT III — FAILURE TO STATE A CLAIM**

2  
3 **A. Article II, Section 17 / Recall Disability Theory**

4 28. Defendants assert that Article II, section 17 transfers only two narrow  
5 recall-related duties—receiving the certification and setting the election  
6 date. That interpretation reflects Defendants’ litigation position, not a  
7 conclusion compelled at the pleading stage. Article II, section 17  
8 establishes a broader constitutional displacement of recall-related  
9 executive authority once a recall is initiated. At the Rule 12(b)(6) stage, the  
10 Court evaluates the sufficiency of the complaint, not the ultimate  
11 correctness of competing constitutional interpretations. The complaint sets  
12 forth a structural reading of Article II, section 17 grounded in the text,  
13 purpose, and operation of the recall provisions of the California  
14 Constitution.  
15

16 29. Defendants further contend that nothing in section 17 abrogates Article IV,  
17 section 10(a), which assigns the Governor the power to sign bills. The  
18 complaint does not assert that Article IV disappears. The constitutional  
19 framework instead operates through temporary reassignment of recall-  
20 related executive authority when the Governor is the subject of the recall.<sup>1</sup>  
21 Article II, section 17 functions to prevent the Governor from exercising  
22 executive control over recall administration while simultaneously serving  
23 as the object of that recall.  
24

25 30. For purposes of this action, the term “constitutional disability” refers to the  
26 Governor’s inability to exercise recall-related executive authority in a  
27 neutral and lawful manner once the Governor becomes the subject of the  
28

1 recall itself. The California Constitution provides that when the Governor  
2 is unable to discharge the powers and duties of the office, those powers  
3 devolve upon the Lieutenant Governor. Cal. Const. art. V, §10. Once a  
4 recall proceeding has been formally initiated, the Governor simultaneously  
5 becomes the object of the recall while retaining executive authority over  
6 the election process governing that recall<sup>2</sup>. This structural conflict creates a  
7 temporary constitutional incapacity with respect to recall-related duties.

8  
9 31. Executive actions that directly affect the structure or administration of the  
10 recall process therefore exceed constitutional authority when undertaken  
11 by the Governor during the recall period. Where such executive actions  
12 influence the statutory framework governing polling locations, election  
13 administration, or the use of federally funded election infrastructure, those  
14 actions implicate both state constitutional limitations and the Supremacy  
15 Clause of the United States Constitution.

16 32. Defendants also contend that Assembly Bill 2037 cannot be affected  
17 because it was signed after the recall election concluded. That argument  
18 addresses the merits of Plaintiff’s inheritance theory rather than the  
19 sufficiency of the pleadings. The complaint sets forth a continuous  
20 statutory framework in which later enactments preserve and extend defects  
21 originating in earlier unconstitutional structures governing polling  
22 locations and election funding. The pleadings therefore establish a coherent  
23

---

24  
25  
26 <sup>2</sup> See *In re Governorship*, 26 Cal.3d 110, 115–17 (Cal. 1979) (holding that the Lieutenant Governor may exercise  
27 the full powers of the Governor whenever the Governor is physically absent from the state or otherwise  
temporarily disabled under Cal. Const. art. V, §10).

1 chain of constitutional and statutory continuity that connects the  
2 challenged enactments to the underlying recall framework.

3  
4 **B. Article V, Section 10 / Conflict-of-Interest Disability Theory**

5 33. Defendants next dismiss Plaintiff’s Article V, section 10 theory as  
6 “unique” and unsupported. Novelty, however, is not a defect under Rule  
7 12(b)(6). The relevant question is whether the complaint plausibly pleads  
8 that a constitutional conflict or temporary disability existed and that the  
9 Governor therefore lacked authority to participate in the challenged  
10 enactments.

11 34. Defendants also contend that Plaintiff cites no authority establishing that a  
12 conflict of interest qualifies as a “temporary disability.” At the pleading  
13 stage, however, the complaint is not required to prove the entire  
14 constitutional theory. It must provide fair notice of the claim and plead  
15 facts supporting a plausible entitlement to relief.

16 35. Defendants’ brief also overlooks that the Governor formally acknowledged  
17 conflict-of-interest concerns through Executive Order N-03-19, and that  
18 the challenged enactments involve election administration decisions  
19 connected to alcohol-serving establishments and election infrastructure tied  
20 to those conflicts.  
21

22  
23 **C. Supremacy Clause**

24 36. Defendants correctly cite Armstrong for the proposition that the  
25 Supremacy Clause itself is not the source of a standalone cause of action.  
26 That observation does not resolve the issue presented here. The complaint  
27

1 also seeks declaratory relief under 28 U.S.C. § 2201 and prospective  
2 injunctive relief consistent with *Ex parte Young*, which remain available  
3 vehicles for enforcing federal-law limitations on state action.

4 37. Accordingly, even if the Court were to conclude that the phrase  
5 “Supremacy Clause” should not stand as a separately labeled count, the  
6 appropriate remedy would be to construe the theory as part of Plaintiff’s  
7 preemption and prospective-relief claims or to grant leave to amend—not  
8 dismissal of the entire action with prejudice.

9  
10 **D. Federal Funding Conflict**

11  
12 38. Defendants mischaracterize the issue. They argue that AB 2037 does not  
13 expressly authorize the purchase of alcohol with federal funds and  
14 therefore conclude that no federal conflict exists.

15 39. Plaintiff’s claim concerns a broader conflict: whether election  
16 infrastructure financed with federal funds may be implemented within  
17 alcohol-connected facilities under the challenged state statutory  
18 framework.

19 40. At the pleading stage, the Court must accept the well-pled facts as true and  
20 determine only whether the claim is plausible as a matter of law.

21 41. Because the federal funding restrictions identified in the Complaint raise a  
22 substantial legal question, dismissal with prejudice is improper.  
23  
24  
25  
26  
27  
28

1 **IX. ARGUMENT IV — DISMISSAL WITH PREJUDICE IS IMPROPER**

2  
3 42. Defendants’ request for dismissal with prejudice should be denied for an  
4 independent reason: Plaintiff filed a motion for leave to file a Second  
5 Amended Complaint on February 18, 2026. Federal Rule of Civil  
6 Procedure 15(a)(2) provides that leave should be freely given when justice  
7 so requires.

8 43. Defendants’ assertion that amendment would be futile is premature  
9 because the Court has not yet ruled on the pending motion for leave to  
10 amend, and Defendants have not shown that no set of additional facts  
11 could cure any perceived deficiencies.

12 44. Defendants’ request for dismissal with prejudice is procedurally improper  
13 because Plaintiff has already filed a Motion for Leave to File a Second  
14 Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).  
15 When a motion to amend is pending, courts routinely deny motions  
16 directed to the earlier pleading as premature because an amended  
17 complaint supersedes the prior complaint and becomes the operative  
18 pleading. See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend  
19 should be freely granted absent undue delay, bad faith, or futility); *Lacey*  
20 *v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc) (an  
21 amended complaint supersedes the prior pleading and renders it without  
22 legal effect). Because Plaintiff’s motion to amend remains pending,  
23 Defendants’ motion to dismiss the First Amended Complaint is  
24 procedurally premature and should be denied without prejudice.

25  
26 45. Dismissal with prejudice is therefore inappropriate.

1 46. Defendants’ arguments rely on characterization disputes, including  
2 whether Plaintiff presents a generalized grievance, whether the current  
3 statutory framework differs from prior cases, whether the requested relief  
4 is prospective, and whether federal funding conflicts are sufficiently  
5 pleaded. These are issues that amendment may clarify.

6 47. Dismissal with prejudice is also inappropriate because Plaintiff has  
7 preserved a threshold sequencing issue through his March 3 Request for  
8 Judicial Notice (“RJN”), which explains that *Shapiro v. McManus*, 577  
9 U.S. 39, 44–45 (2015), requires the § 2284 threshold question to be  
10 resolved before a single judge reaches the merits. The Ninth Circuit has  
11 repeatedly held that dismissal with prejudice at the pleading stage is  
12 improper where amendment could potentially cure any deficiencies. See  
13 *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lacey v. Maricopa County*,  
14 693 F.3d 896, 926–27 (9th Cir. 2012) (en banc).

15 48. Dismissal with prejudice would also be improper because Plaintiff seeks  
16 nominal damages for completed constitutional injuries, which  
17 independently preserve Article III jurisdiction even after an election has  
18 concluded.<sup>3</sup>  
19  
20  
21  
22

---

23  
24  
25 <sup>3</sup> See *Clark v. Weber*, 68 F.4th 678, 681–82 (9th Cir. 2022) (holding challenge arising from the  
26 2021 California gubernatorial recall election was not moot where plaintiff alleged a completed  
27 injury and sought nominal damages); see also *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801–  
28 02 (2021) (nominal damages satisfy Article III redressability for completed constitutional  
injuries).

1 **X. REQUESTED DISPOSITION**

2  
3 49. For the reasons stated above, Defendants’ Motion to Dismiss should be  
4 denied. At a minimum, the Court should decline to dismiss the action with  
5 prejudice and should instead permit amendment of the pleadings consistent  
6 with Federal Rule of Civil Procedure 15.

7 50. In addition, because Plaintiff has preserved a statutory sequencing issue  
8 concerning the applicability of 28 U.S.C. § 2284, the Court should resolve  
9 that threshold jurisdictional issue before reaching the merits of Defendants’  
10 dismissal arguments. See *Shapiro v. McManus*, 577 U.S. 39, 44–45 (2015).

11 51. Alternatively, the Court should defer ruling on Defendants’ motion  
12 pending resolution of Plaintiff’s Motion for Leave to File a Second  
13 Amended Complaint, which would supersede the First Amended  
14 Complaint and render the present motion directed to the earlier pleading  
15 procedurally premature.

16 52. Because the issues presented in Defendants’ motion intersect with a  
17 pending motion for leave to amend, a preserved statutory sequencing issue  
18 under 28 U.S.C. § 2284, and related appellate proceedings presently  
19 pending before the United States Court of Appeals for the Ninth Circuit,  
20 Plaintiff respectfully requests that the Court consider issuing an order  
21 shortening time or otherwise establishing an expedited briefing and hearing  
22 schedule to ensure orderly resolution of the pleadings and jurisdictional  
23 issues presented in this action.  
24  
25  
26  
27  
28

1 **XI. CONCLUSION**

2  
3 53. For the foregoing reasons, Plaintiff respectfully requests that the Court  
4 deny Defendants' Motion to Dismiss.

5 54. In the alternative, the Court should deny the motion without prejudice,  
6 defer ruling pending disposition of Plaintiff's Motion for Leave to File a  
7 Second Amended Complaint, or grant leave to amend.

8  
9 Dated: March 8, 2026

Respectfully submitted

10 *Carl Gordon*

11 Carl Gordon  
12 Plaintiff, Pro Se  
13 8306 Wilshire Blvd., No. 792  
14 Beverly Hills, CA 90211  
15 universityofthehood@gmail.com  
16 (310) 926-3939  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Mae Gordon, declare as follows:

1. I am employed in the City and County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My address is 1125 South Holt Avenue, Apt. 3, Los Angeles, California 90035.
2. On March 8, 2026, I served the following document: PLAINTIFF’S EMERGENCY OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT SUPPORTED BY EMERGENCY NOTICE REGARDING PRIOR UNDOCKETED FILINGS AND REQUEST FOR EXPEDITED CONSIDERATION
3. Service was effected by electronic mail to the following recipients at the email addresses listed below:

Chambers Courtesy Copy  
 Courtroom Deputy Clerk Daniel Tamayo  
[SVW\\_Chambers@cacd.uscourts.gov](mailto:SVW_Chambers@cacd.uscourts.gov)

Courtroom Deputy Clerk Derek Davis  
[DMG\\_Chambers@cacd.uscourts.gov](mailto:DMG_Chambers@cacd.uscourts.gov)

Attorney General of California  
 Todd Grabarsky  
 Supervising Deputy Attorney General  
[Todd.Grabarsky@doj.ca.gov](mailto:Todd.Grabarsky@doj.ca.gov)

Samuel E. Sokolsky  
 Deputy Attorney General  
 State Bar No. 348173  
 455 Golden Gate Ave, Ste 11000, San Francisco, CA 94102  
 Telephone: (415) 510-3584  
 E-mail: [Samuel.Sokolsky@doj.ca.gov](mailto:Samuel.Sokolsky@doj.ca.gov)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on March 8, 2026, at Los Angeles, California.



Mae Gordon