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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION  
13

14 **STEVE HILTON,**

15 Plaintiff,

16 v.

17 **SHIRLEY WEBER, in her official**  
18 **capacity as California Secretary of**  
**State, GOVERNOR GAVIN**  
19 **NEWSOM, in his official capacity,**

20 Defendants,

21  
22 **And the LEGISLATURE OF**  
**CALIFORNIA,**

23 Real Party in Interest.  
24  
25  
26  
27  
28

8:25-cv-01988-KK-E

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

Date: Nov. 6, 2025  
Time: 9:30 a.m.  
Courtroom: 3  
Judge: Hon. Kenly Kiya Kato  
Action Filed: Sept. 3, 2025

# TABLE OF CONTENTS

	Page
INTRODUCTION .....	1
BACKGROUND .....	2
I. Redistricting in California.....	2
II. Prop 50 and the Ongoing Special Election .....	3
III. Plaintiff’s Prop 50 Challenge .....	5
LEGAL STANDARD.....	7
ARGUMENT.....	7
I. Plaintiff Lacks Article III Standing .....	8
A. Plaintiff Cannot Show Any Injury-In-Fact .....	8
B. Plaintiff Cannot Show Causation or Redressability.....	12
II. Plaintiff Has Not Raised any Serious Questions Going to the Merits .....	12
A. California Voters Are Empowered to Choose Mid-Decade Redistricting Via Constitutional Amendment.....	13
B. Plaintiff’s “One Person, One Vote” Claim Fails as a Matter of Law .....	15
III. Plaintiff Fails to Satisfy the Remaining Preliminary Injunction Factors .....	19
A. Plaintiff Cannot Establish Irreparable Harm.....	19
B. The Public Interest and Balance of the Equities Tip Sharply in Favor of Denying Interim Relief.....	20
CONCLUSION .....	22

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>All. for the Wild Rockies v. Cottrell</i> 632 F.3d 1127 (9th Cir. 2011).....	19
<i>Amoco Prod. Co. v. Village of Gambell, Alaska</i> 480 U.S. 531 (1987).....	20
<i>Arizona State Legislature v. Arizona Indep. Redistricting Comm’n</i> 576 U.S. 787 (2015).....	2
<i>Caribbean Marine Servs. Co. v. Baldrige</i> 844 F.2d 668 (9th Cir. 1988).....	19
<i>Carney v. Adams</i> 592 U.S. 53 (2020).....	12
<i>Drakes Bay Oyster Co. v. Jewell</i> 747 F.3d 1073 (9th Cir. 2014).....	20
<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Montana</i> 98 F.4th 1180 (9th Cir. 2024).....	7, 13
<i>Food &amp; Drug Admin. v. All. for Hippocratic Med.</i> 602 U.S. 367 (2024).....	8
<i>Fortson v. Toombs</i> 379 U.S. 621 (1965).....	22
<i>Gill v. Whitford</i> 585 U.S. 48 (2018).....	9, 12, 15
<i>Gonzalez v. Automatic Emp. Credit Union</i> 419 U.S. 90 (1974).....	22
<i>Grove v. Emison</i> 507 U.S. 25 (1993).....	2
<i>Karcher v. Daggett</i> 462 U.S. 725 (1983).....	passim

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>League of Latin American Voters v. Perry</i> Case No. 3:21-cv-00259-DCG-JES-JVB, 2025 U.S. Dist. LEXIS 201647 (W.D. Tex. Sept. 30, 2025) .....	18
<i>League of United Latin American Citizens v. Perry</i> 548 U.S. 399 (2006).....	<i>passim</i>
<i>Legislature v. Deukmejian</i> 34 Cal. 3d 658 (1983) .....	3, 13, 14
<i>Lujan v. Defenders of Wildlife</i> 504 U.S. 555 (1992).....	8
<i>Lydo Enters., Inc. v. City of Las Vegas</i> 745 F.2d 1211 (9th Cir. 1984).....	19
<i>Purcell v. Gonzalez</i> 549 U.S. 1 (2006).....	21, 22
<i>Reynolds v. Sims</i> 377 U.S. 533 (1964).....	7, 9, 22
<i>Rucho v. Common Cause</i> 588 U.S. 684 (2019).....	<i>passim</i>
<i>Sanchez v. Weber</i> No. S292592, 2025 Cal. LEXIS 5694 (Cal. Aug. 27, 2025) .....	7
<i>Simon v. E. Kentucky Welfare Rts. Org.</i> 426 U.S. 26 (1976).....	12
<i>Smiley v. Holm</i> 285 U.S. 355 (1932).....	2
<i>Strickland v. Weber</i> No. S292490, 2025 Cal. LEXIS 5421 (Cal. Aug. 20, 2025) .....	6
<i>Sw. Voter Registration Educ. Project v. Shelley</i> 344 F.3d 914 (9th Cir. 2003).....	<i>passim</i>

**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

*Tennant v. Jefferson County Comm’n*  
567 U.S. 758 (2012).....7, 11, 16

*Warth v. Seldin*  
422 U.S. 490 (1975).....8

*Winter v. Nat. Res. Def. Council, Inc.*  
555 U.S. 7 (2008).....7, 19

**STATUTES**

28 U.S.C. § 2284.....22

Assemb. Bill 604, 2025 Cal. Stat., ch. 96.....*passim*

Assemb. Const. Amend. No. 8, 2025 Cal. Stat., ch. 156.....*passim*

Sen. Bill No. 280, 2025 Cal. Stat., ch. 97.....4, 13

**CONSTITUTIONAL PROVISIONS**

U.S. Const. art. I, § 4, cl. 1.....2

U.S. Const. art. III.....8

U.S. Const. amend. XIV .....6, 13, 17

Cal. Const. art. XVIII, § 1.....3, 14

Cal. Const. art. XVIII, § 4.....3, 20

Cal. Const. art. XXI .....3, 4, 13, 14

Cal. Const. art. XXI, § 1 .....3, 4, 14

Cal. Const. art. XXI, § 2(e).....14

**OTHER AUTHORITIES**

Cal. Leg., Assemb. Floor Analysis, AB 604 (2025-26 Reg. Sess.),  
(Aug. 21, 2025), available at <https://tinyurl.com/mr4cmwcu>.....4

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
Cal. St. Assemb. Comm. on Elections, <i>AB 604 Districts Atlas</i> , <a href="https://aelc.assembly.ca.gov/system/files/2025-08/ab604-compressed.pdf">https://aelc.assembly.ca.gov/system/files/2025-08/ab604-compressed.pdf</a> .....	5, 11
Cal. St. Assemb. Comm. on Elections, <i>Proposed Congressional Map</i> , <a href="https://aelc.assembly.ca.gov/proposed-congressional-map">https://aelc.assembly.ca.gov/proposed-congressional-map</a> .....	5
Gov. Greg Abbott (@GregAbbott_TX), X (Aug. 31, 2025, 8:23 p.m.), <a href="https://tinyurl.com/">https://tinyurl.com/</a> (“The new Congressional Map I signed . . . moved the Texas G.O.P. further to the right.”).....	3
H.B. 4, 89th Leg., 2nd Special Sess. (Tex. 2025) .....	3
Steve Hilton, <i>Opinion: Why I’m launching a legal war against California Democrats’ unconstitutional power grab</i> , Fox News, Aug. 5, 2025, <a href="https://tinyurl.com/mrxpnzm4">https://tinyurl.com/mrxpnzm4</a> .....	5
U.S. Census Bureau, <i>Guidance for Data Users: Comparing ACS Data</i> , <a href="https://tinyurl.com/4sut369n">https://tinyurl.com/4sut369n</a> .....	10

## INTRODUCTION

On November 4, 2025—just fifteen days from today—California will hold a Statewide Special Election. California voters will decide whether to approve Proposition 50 (“Prop 50”), a ballot measure that proposes a state constitutional amendment temporarily changing how California conducts redistricting for federal congressional districts. If passed, Prop 50 would temporarily replace the independent Citizens Redistricting Commission’s regular decennial redistricting with a new map described in Assembly Bill 604 (“AB 604”) for the 2026, 2028, and 2030 congressional elections. AB 604, 2025 Cal. Stat., ch. 96.

Plaintiff, a single voter, asks this Court to grant a preliminary injunction to immediately enjoin implementation of AB 604’s proposed new map if Prop 50 passes. Granting a preliminary injunction enjoining implementation of AB 604’s map if Prop 50 passes would cause enormous voter confusion, significantly disrupt candidate campaigns, and severely impact state and local officials’ preparations for the 2026 Statewide Primary Election, which will begin shortly after the Secretary’s December 12 deadline to certify the Special Election results. Against these concrete, irreparable harms to the State, candidates, and voters statewide, Plaintiff offers only meritless theories of vote dilution and *no* relevant evidence to support his claims of malapportionment or any injury he will suffer in the absence of interim relief.

Central to his preliminary injunction motion, Plaintiff claims that AB 604’s proposed new map will dilute every Californian’s vote because it used 2020 decennial census data to apportion districts without accounting for intervening population changes. In Plaintiff’s view, the Legislature’s decision to conduct mid-decade redistricting using that data was an unconstitutional “hyper-partisan gerrymandering project” preventing the State from being able to justify any deviations from the equal-population requirement for apportionment. But Plaintiff cannot make out an equal-population violation based on the use of the existing

1 census data in mid-decade redistricting, so the Legislature’s motivations for  
2 conducting redistricting provide no basis for a vote dilution claim. *See League of*  
3 *United Latin Am. Citizens v. Perry*, 548 U.S. 399, 415, 420-23 (2006) (*LULAC*)  
4 (Kennedy, J.).

5 Moreover, Plaintiff fails to present any evidence that his vote would carry less  
6 weight than any other voter’s if AB 604’s map is used in future elections—to the  
7 contrary, his proposed district was drawn with *zero* deviation from the ideal equal-  
8 population size. Nor does he explain why using a new map based on 2020 census  
9 data would result in his vote carrying any less weight than it carries under the  
10 existing map drawn using the same data.

11 Plaintiff’s legal claims fail as a matter of law. Having failed to identify any  
12 harm that would result from implementing AB 604’s map, Plaintiff can establish  
13 neither standing nor the irreparable harm required for a preliminary injunction. In  
14 light of the severe harm that would result to California, candidates, and voters  
15 statewide if the Court issues a preliminary injunction barring implementation of AB  
16 604’s new map if voters approve it, Plaintiff cannot show that the balance of harms  
17 tips sharply in his favor. This Court should deny Plaintiff’s demand for interim  
18 relief.

## 19 BACKGROUND

### 20 I. REDISTRICTING IN CALIFORNIA

21 The U.S. “Constitution leaves with the States primary responsibility for  
22 apportionment of their federal congressional and state legislative districts.” *Grove*  
23 *v. Emison*, 507 U.S. 25, 34 (1993); *accord* U.S. Const. art. I, § 4, cl. 1. A state’s  
24 choice of how to allocate power in redistricting “is a matter of state polity.” *Smiley*  
25 *v. Holm*, 285 U.S. 355, 368 (1932). Among other choices, state legislatures may  
26 retain redistricting authority or assign it to independent commissions. *See, e.g.,*  
27 *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 576 U.S. 787,  
28 802 (2015).

1 California voters have the power to amend California’s Constitution by  
2 approving legislatively referred constitutional amendments. *See* Cal. Const. art.  
3 XVIII, §§ 1 & 4. This power extends to amending the portion of the California  
4 Constitution—article XXI—that governs how and when California draws  
5 congressional district maps. *Legislature v. Deukmejian*, 34 Cal. 3d 658, 680  
6 (1983). As currently written, article XXI, section 1 charges California’s  
7 independent Citizens Redistricting Commission (the Commission) with redrawing  
8 congressional districts in the year following the decennial national census.

## 9 **II. PROP 50 AND THE NOVEMBER 4, 2025 SPECIAL ELECTION**

10 In August 2025, Texas redrew its congressional district lines mid-decade to  
11 provide Republicans a partisan advantage. *See* H.B. 4, 89th Leg., 2nd Special Sess.  
12 (Tex. 2025).<sup>1</sup> Several other States, including California, considered doing likewise.  
13 Days before Texas enacted H.B. 4, the California Legislature proposed a  
14 constitutional amendment to allow California to conduct mid-decade redistricting.  
15 Assembly Constitutional Amendment 8 (“ACA 8”), passed as part of the Election  
16 Rigging Response Act (“ERRA”), is a legislatively referred constitutional  
17 amendment filed with the Secretary of State on August 21, 2025. ACA 8, 2025  
18 Cal. Stat., ch. 156.

19 Prop 50 is a measure that appears on the November 4, 2025 Special Election  
20 ballot and asks California voters to decide whether to adopt ACA 8. If adopted,  
21 ACA 8 would amend article XXI of the California Constitution to temporarily  
22 replace the Commission’s regular decennial redistricting with a new map described  
23 in AB 604 for the 2026, 2028, and 2030 congressional elections. *See* ACA 8 §  
24 4(b); Cal. Const. art. XVIII, §§ 1, 4.<sup>2</sup> Contrary to Plaintiff’s assertion, ECF No. 1

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25 <sup>1</sup> *See also* Gov. Greg Abbott (@GregAbbott\_TX), X (Aug. 31, 2025, 8:23  
26 p.m.), <https://tinyurl.com/4s6vapfp> (“The new Congressional Map I signed . . .  
27 moved the Texas G.O.P. further to the right.”)

28 <sup>2</sup> The ERRA legislative package included ACA 8, AB 604, and Senate Bill  
(continued...)

1 (“Complaint” or “Compl.”) ¶8, ACA 8 would also expressly override any state  
2 constitutional provision that would otherwise prevent use of this new map,  
3 including article XXI, section 1’s current provision setting the time for redistricting  
4 as the year following the decennial census. *See* ACA 8 § 4(b) & (d) (providing the  
5 new map will be used “notwithstanding any other provision of this Constitution or  
6 existing law” until the Commission resumes redistricting responsibility in 2031).

7 The California Legislature described ACA 8 as an attempt “to neutralize the  
8 partisan gerrymandering being threatened by Republican-led states without eroding  
9 fair representation for all communities” to ensure that the “2026 United States  
10 midterm elections for Congress” are “conducted on a level playing field[.]” ACA  
11 8, § 2. The legislative history makes clear that AB 604’s authors sought to draw its  
12 temporary map “follow[ing] the principles that California voters value most in  
13 establishing legislative districts”: (1) “maintain[ing] the geographic integrity of  
14 even more cities than the current map adopted by the Citizens Redistricting  
15 Commission,” (2) “ensur[ing] that communities of interest remain intact—a key  
16 principle of the constitutional amendment establishing the Citizens Redistricting  
17 Commission—to exercise their collective voice and vote to elect officials who truly  
18 represent them,” and (3) doing so “without diluting or favoring the voting power of  
19 any one voter over another.” *See* Cal. Leg., Assemb. Floor Analysis, AB 604  
20 (2025-26 Reg. Sess.), at 2 (Aug. 21, 2025), available at

21 <https://tinyurl.com/mr4cmwcu>.

22 Before passing AB 604 and ACA 8, the Legislature provided Californians the  
23 opportunity to submit comments and testimony in support of and opposition to the  
24 proposals. *Id.* at 3.<sup>3</sup> The Legislature also made an interactive map publicly

25  
26 No. 280 (“SB 280”), 2025 Cal. Stat., ch. 97. SB 280 sets the Special Election and  
27 outlines processes and timelines related to the Special Election and June 2026  
28 Statewide Primary Election.

<sup>3</sup> *See also* <https://aelc.assembly.ca.gov/> (last visited Oct. 10, 2025).

1 available in mid-August so that voters may view their proposed districts and  
2 detailed information regarding the number of people apportioned into each district  
3 and any population variance between districts.<sup>4</sup>

4 Data addressing the equality of population sizes in each of the proposed  
5 districts is publicly available on the Assembly Elections Committee’s interactive  
6 map and in its corresponding AB 604 Atlas.<sup>5</sup> As shown in the AB 604 Atlas, the  
7 ideal population count for each district proposed in AB 604—i.e., the number of  
8 people that would achieve absolute population equality between the districts  
9 according to data from the 2020 decennial census—would be 760,066 people.  
10 California’s population would be divided equally among districts, with a difference  
11 in the number of people assigned to each district—a deviation from absolutely  
12 equal population distribution—of just zero people or one person. In other words, as  
13 shown in the AB 604 Atlas, every single proposed district was drawn to contain  
14 760,066, 760,065, or 760,067 people.

15 State and local officials have devoted significant time and resources toward  
16 preparing for and administering the Special Election and voters have spent time  
17 educating themselves on the issues and casting their votes. *See* Declaration of Jana  
18 Lean (“Lean Decl.”) ¶¶ 9, 15, 16, 19, 20, 24.

### 19 **III. PLAINTIFF’S PROP 50 CHALLENGE**

20 In early August, Plaintiff Steve Hilton promised to file a lawsuit in federal  
21 court to challenge what would become known as Prop 50.<sup>6</sup> Thirty days later and

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22  
23 <sup>4</sup> Cal. St. Assemb. Comm. on Elections, *Proposed Congressional Map*,  
24 <https://aelc.assembly.ca.gov/proposed-congressional-map> (last visited Oct. 10,  
2025).

25 <sup>5</sup> *See* Cal. St. Assemb. Comm. on Elections, *AB 604 Districts Atlas*,  
26 <https://aelc.assembly.ca.gov/system/files/2025-08/ab604-compressed.pdf> (last  
visited Oct. 10, 2025) (“AB 604 Atlas”).

27 <sup>6</sup> Steve Hilton, *Opinion: Why I’m launching a legal war against California*  
28 *Democrats’ unconstitutional power grab*, Fox News, Aug. 5, 2025,  
<https://tinyurl.com/mrxpnzm4>.

1 two weeks after the Legislature approved placing Prop 50 on the ballot, Plaintiff  
2 filed his Complaint, but waited three weeks before attempting to serve Defendants,  
3 ECF Nos. 15, 16, 28-1 ¶¶ 2-4. A month after filing the complaint and weeks after  
4 voting in the Special Election began, Plaintiff moved for a preliminary injunction,  
5 ECF No. 17, waited three days to serve Defendants, ECF No. 28-1 ¶ 5, and filed an  
6 ex parte application to expedite the hearing, ECF No. 27. The Court denied  
7 Plaintiff’s application, stating that his delay in moving for a preliminary injunction  
8 “creat[ed] the purported crisis that requires ex parte relief,” making ex parte relief  
9 inappropriate. ECF No. 33 at 3.

10 In both his Complaint and his Memorandum (ECF No. 17-1 or “Memo.”),  
11 Plaintiff asserts that if Prop 50 is approved and AB 604’s map is implemented,  
12 congressional districts in California will be malapportioned with unequal  
13 populations in violation of the “one person, one vote” principle protected by the  
14 Fourteenth Amendment’s equal protection guarantee, resulting in vote dilution.  
15 Compl. ¶ 12; Memo. at 1. He also claims—incorrectly—that the Legislature’s  
16 proposal that voters approve mid-decade redistricting via ACA 8 “ignor[ed]”  
17 California Supreme Court precedent, thereby diluting his vote. Compl. ¶¶ 16-22.  
18 He asks the Court either to direct Secretary Weber “to suspend all activity in  
19 processing this election and postpone this election”—a claim that will be moot by  
20 the time of the hearing—or to preliminarily enjoin Defendants from implementing  
21 Prop 50 if voters approve it. Memo. at 22. Either option would have the effect of  
22 interfering with state and local officials’ preparations for the 2026 Statewide  
23 Primary Election, which will “begin shortly after the Secretary’s December 2, 2025  
24 deadline to certify the Special Election results.” Lean Decl. ¶ 24.

25 In August, a handful of California state legislators filed two petitions seeking  
26 similar relief directly from the California Supreme Court, making many of the same  
27 arguments as Plaintiff. The California Supreme Court denied both petitions. *See*  
28 *Strickland v. Weber*, No. S292490, 2025 Cal. LEXIS 5421 (Cal. Aug. 20, 2025);

1 *Sanchez v. Weber*, No. S292592, 2025 Cal. LEXIS 5694 (Cal. Aug. 27, 2025).

2 **LEGAL STANDARD**

3 “A preliminary injunction is an extraordinary remedy never awarded as of  
4 right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Plaintiff must  
5 make “a clear showing” that he is “entitled to such relief.” *Id.* at 22. Plaintiff urges  
6 the Court to apply the Ninth Circuit’s “‘sliding scale’ variant of the *Winter* test—  
7 under which a party is entitled to a preliminary injunction if it demonstrates (1)  
8 ‘serious questions going to the merits,’ (2) ‘a likelihood of irreparable injury,’ (3) ‘a  
9 balance of hardships that tips sharply towards the plaintiff,’ and (4) ‘the injunction  
10 is in the public interest.’” *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*,  
11 98 F.4th 1180, 1190 (9th Cir. 2024) (citation omitted). “[T]he serious questions  
12 standard is ‘a lesser showing than likelihood of success on the merits,’” *id.*, but  
13 imposes a heavier burden on the balance of equities factor.

14 Importantly, “election cases are different from ordinary injunction cases,” such  
15 that “interference with impending elections is extraordinary, and interference with  
16 an election after voting has begun is unprecedented.” *Sw. Voter Registration Educ.*  
17 *Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (“*SWVREP*”) (citing *Reynolds*  
18 *v. Sims*, 377 U.S. 533, 585 (1964)).

19 **ARGUMENT**

20 “[T]he constitutional test for the validity of congressional districting schemes  
21 [i]s one of substantial equality of population among the various districts established  
22 by a state legislature for the election of members of the Federal House of  
23 Representatives.” *Reynolds*, 377 U.S. at 559. Congressional maps need not be  
24 drawn with “precise mathematical equality”; a State need only “justify population  
25 differences between districts that could have been avoided by a good-faith effort to  
26 achieve absolute equality.” *Tennant v. Jefferson Cnty. Comm’n*, 567 U.S. 758, 759  
27 (2012) (quoting *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (internal quotation  
28 marks omitted). Thus, a two-prong test applies: “[t]he parties challenging the plan

1 bear the burden of proving the existence of population differences that ‘could  
2 practicably be avoided.’” *Id.* at 760 (quoting *Karcher*, 462 U.S. at 734). “If they  
3 do so, the burden shifts to the State to ‘show with some specificity’ that the  
4 population differences ‘were necessary to achieve some legitimate state objective.’”  
5 *Id.* (quoting *Karcher*, 462 U.S. at 741). Plaintiff’s extraordinary request for interim  
6 relief must be denied because his vote dilution theories fail as a matter of law and  
7 he lacks standing to bring them in the first place.

### 8 **I. PLAINTIFF LACKS ARTICLE III STANDING**

9 “Article III of the Constitution confines the jurisdiction of federal courts to  
10 ‘Cases’ and ‘Controversies.’” *Food & Drug Admin. v. All. for Hippocratic Med.*,  
11 602 U.S. 367, 378 (2024). An “essential” part of Article III’s case-or-controversy  
12 requirement “is the doctrine of standing.” *Lujan v. Defenders of Wildlife*, 504 U.S.  
13 555, 560 (1992). To establish standing, “a plaintiff must demonstrate (i) that she  
14 has suffered or likely will suffer an injury in fact, (ii) that the injury likely was  
15 caused or will be caused by the defendant, and (iii) that the injury likely would be  
16 redressed by the requested judicial relief.” *All. for Hippocratic Med.*, 602 U.S. at  
17 380. Plaintiff cannot establish any of these three elements.

#### 18 **A. Plaintiff Cannot Show Any Injury-In-Fact**

19 Plaintiff must allege an injury that is “actual or imminent, not speculative—  
20 meaning that the injury must have already occurred or be likely to occur soon.” *All.*  
21 *for Hippocratic Med.*, 602 U.S. at 381. This injury must “be ‘concrete,’ meaning  
22 that it must be real and not abstract.” *Id.* It also must be “particularized,” that is, it  
23 “must affect ‘the plaintiff in a personal and individual way’ and not be a  
24 generalized grievance.” *Id.* Because Plaintiff seeks prospective relief, he “must  
25 establish a sufficient likelihood of future injury.” *Id.*

26 Plaintiff cannot show he will imminently suffer an injury sufficient to  
27 challenge proposed congressional district lines statewide. He alleges that he resides  
28 in a congressional district in California—District 15—and then attempts to

1 challenge the proposed map for *all* congressional districts in California, arguing  
2 that redistricting under Prop 50 could result in the dilution of his vote and the votes  
3 of others. Compl. ¶¶ 11, 22; Memo. at 20. But Plaintiff cannot “attempt to raise  
4 putative rights” of other voters to support his claim of entitlement to relief. *Warth*  
5 *v. Seldin*, 422 U.S. 490, 509, 514 (1975). Nor can he claim statewide relief. When  
6 the “alleged harm is the dilution of [an individual’s] votes, that injury is district  
7 specific” and any remedy “lies in the revision of the boundaries of the individual’s  
8 own district.” *Gill v. Whitford*, 585 U.S. 48, 66 (2018). Plaintiff’s statewide  
9 objection is “only a generalized grievance against governmental conduct” and is  
10 inadequate to support standing. *Id.*

11 Plaintiff, moreover, has not established any injury sufficient to challenge  
12 redistricting in his own district. He suggests that because some people have moved,  
13 died, or been born since the last census, the population of his district might have  
14 changed. Memo. at 17-18. He then argues that if Prop 50 is passed and  
15 implemented, the resulting malapportionment “will dilute every California[n]’s  
16 voting power by creating congressional districts that do not comply with the ‘one-  
17 person, one-vote’ principle because they are not comprised of roughly equal  
18 population based on any accurate and current data.” Memo. at 20.

19 Plaintiff misunderstands malapportionment and what such claims require to  
20 establish standing. Malapportionment involves the unequal distribution of people  
21 across district lines, resulting in citizens in less-populated districts having votes that  
22 carry more weight than citizens in more-populated districts. *See Reynolds*, 377  
23 U.S. at 562-63. By definition, malapportionment cannot “dilute every  
24 California[n]’s voting power.” Memo. at 20. Rather it results in some voters  
25 having the weight of their votes diluted while the weight of others’ votes is  
26 enhanced. *Elec. Integrity Proj. Cal., Inc. v. Weber*, 113 F.4th 1072, 1087 (9th Cir.  
27 2024). Plaintiff provides no evidence supporting even a bare inference that his vote  
28 would be diluted if AB 604’s map is adopted. Nor does he provide any information

1 to compare the current congressional map for his district to the proposed  
2 congressional map under Prop 50.

3 The only “evidence” Plaintiff proffers is a barebones declaration from  
4 consultant Chandra Sharma, who offers generalized thoughts and no district-  
5 specific data or analysis. ECF No. 17-2. Even if the Court credits that declaration  
6 for the little it says, and even if Plaintiff is correct that population fluctuations since  
7 2020 were so significant that the Legislature was legally obliged to consider them  
8 (he is not, *see infra* Argument § II.B.), Sharma’s declaration actually supports the  
9 conclusion that Plaintiff’s vote likely would *not* be diluted: If, as Mr. Sharma  
10 asserts, ECF No. 17-2 at 3, San Francisco’s population decreased since the 2020  
11 census, then Plaintiff and other voters remaining in District 15—which  
12 encompasses parts of San Francisco—are more likely to have their votes weigh  
13 *more* in congressional elections under AB 604’s proposed map than voters living in  
14 districts where populations increased.<sup>7</sup>

15 In any case, the Legislature was under no constitutional obligation to use any  
16 population data other than the latest official census data in crafting AB 604’s  
17 proposed map. *See infra* Argument § II.B.; *LULAC*, 548 U.S. at 415, 420-23  
18 (Kennedy, J.). And Plaintiff cannot establish that any dilution of his vote would  
19 occur under the proposed District 15 map drawn using official 2020 census data.  
20 Plaintiff could have, but did not, provide the Court with a copy of the proposed  
21 District 15 map (or even a copy of the current District 15 map). As discussed  
22 above, the ideal population size for each proposed district under AB 604 is 760,066

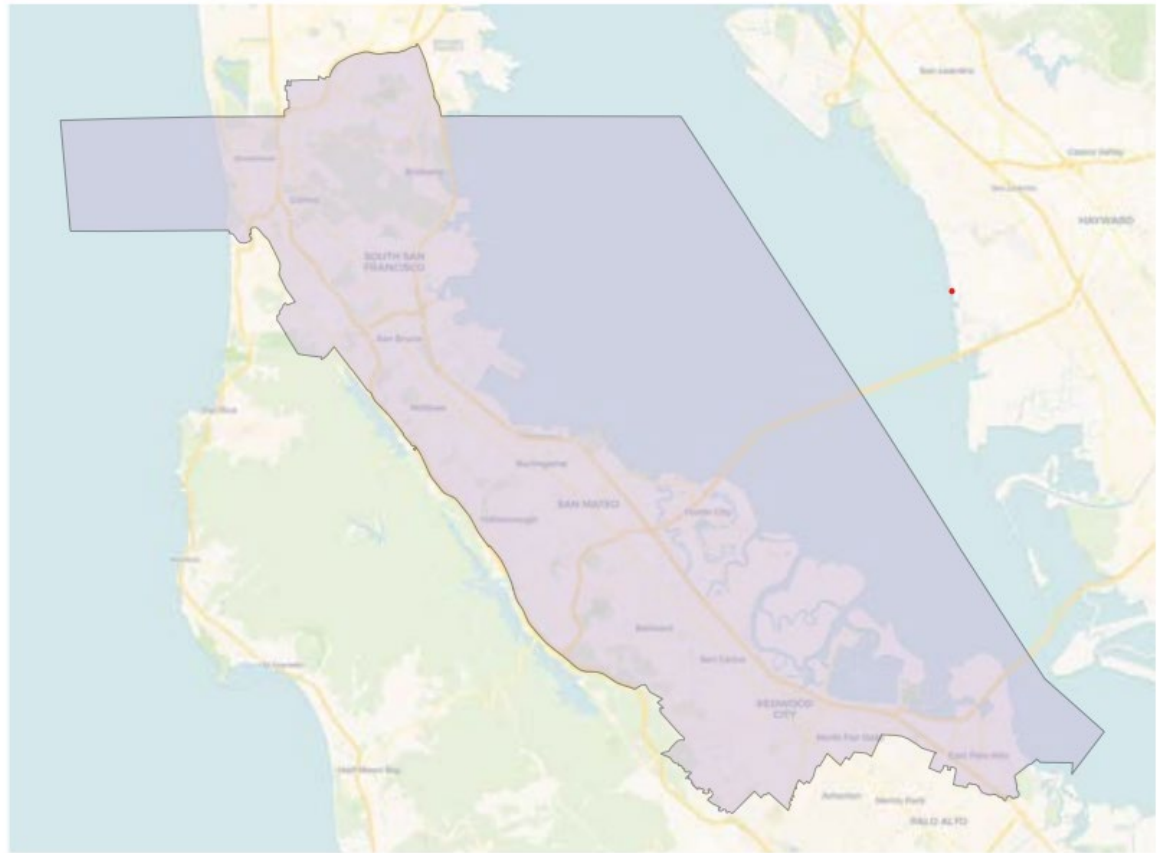
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23 <sup>7</sup> Mr. Sharma’s conclusory declaration references American Community  
24 Survey data from 2024 to draw conclusions about population shifts. ECF No. 17-2  
25 at 3. But “all ACS data are estimates” based on data collected “from a sample of  
26 the population in the United States and Puerto Rico,” and the Census Bureau  
27 advises data users to “use ACS to obtain population characteristics” rather than  
28 population totals, and “numbers from the [latest] Census to obtain counts of the  
population.” U.S. Census Bureau, *Guidance for Data Users: Comparing ACS  
Data*, <https://tinyurl.com/4sut369n> (last visited Oct. 10, 2025).

people. *See supra* Background § II; AB 604 Atlas. If Prop 50 is approved, District 15 will be drawn to contain 760,066 people—*zero* deviation from the ideal, absolutely equal population count, as shown in the excerpt below. *See* AB 604 Atlas at 22.

Because Plaintiff’s district would not deviate from the ideal population size at all if voters approved Prop 50, he cannot meet his burden to establish at the threshold “the existence of population differences that ‘could practicably be avoided.’” *Tennant*, 567 U.S. at 760 (quoting *Karcher*, 462 U.S. at 734). Thus, he

### District 15



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
760,066	0	0.0%	267,088	35.1%	201,867	26.6%	271,935	35.8%	19,176	2.5%
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %		
490,568	183,124	37.3%	101,204	20.6%	188,931	38.5%	17,309	3.5%		

1 cannot identify any injury sufficient to establish standing.<sup>8</sup>

2 **B. Plaintiff Cannot Show Causation or Redressability**

3 Plaintiff also must show that his alleged injury “fairly can be traced to the  
4 challenged action of the defendant[.]” *Simon v. E. Kentucky Welfare Rts. Org.*, 426  
5 U.S. 26, 41-42 (1976). And he must show that a favorable judicial decision likely  
6 would redress his alleged injury. *Carney v. Adams*, 592 U.S. 53, 58 (2020).  
7 Plaintiff can show neither. Plaintiff’s claimed injury is premised on the use of 2020  
8 census data and his contention that this data does not reflect current population  
9 distributions. Memo. at 13; ECF 1 at ¶11. But whether or not voters approve Prop  
10 50, congressional districts will still be based on 2020 census data, because the  
11 existing congressional district map was drawn using this very data. Any alleged  
12 injury from the use of 2020 census data cannot fairly be traced to the Legislature’s  
13 decision to refer Prop 50 to the voters or the use of AB 604’s map if voters approve  
14 it. As a result, Plaintiff’s claimed injury would remain unredressed.

15 **II. PLAINTIFF HAS NOT RAISED ANY SERIOUS QUESTIONS GOING TO THE**  
16 **MERITS**

17 Plaintiff cannot demonstrate that the balance of equities tips sharply in his  
18 favor, *see infra* Argument § III(B), so he is subject to the more onerous burden to  
19 show likelihood of success on the merits. Nonetheless, even if the “serious

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20 <sup>8</sup> Plaintiff also misses the mark to the extent he seeks to establish standing on  
21 the theory that his “statewide campaign [for California governor] will touch every  
22 Congressional district.” Compl. ¶ 13. Congressional district maps have no bearing  
23 on elections for statewide office. Nor does the purportedly “hyper-partisan” nature  
24 of the proposed redistricting provide Plaintiff a basis to assert rights of people he  
25 hopes will be his constituents in order to bolster his claim of individual standing.  
26 *Id.* ¶ 13. The Supreme Court has been clear: partisan gerrymandering claims are  
27 nonjusticiable. *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019). And the Court  
28 in *Gill v. Whitford*, 585 U.S. 48 (2018), which Plaintiff cites to support his  
argument that he would be injured by the “wast[ing]” of his vote, Memo. at 18,  
cautioned that establishing injury in fact “[t]urns on effect, not intent,” 585 U.S. at  
70. Plaintiff cannot establish standing on his vote dilution claims without showing  
that his vote will be worth less than voters in other districts.

1 questions” sliding scale test applies, Plaintiff must still show that his claims  
2 “involve a fair chance of success on the merits.” *Flathead-Lolo-Bitterroot Citizen*  
3 *Task Force*, 98 F.4th at 1192 (internal quotation marks and citations omitted).  
4 Plaintiff cannot meet even this lowered bar, as his claims fail as a matter of law.

5 **A. California Voters Are Empowered to Choose Mid-Decade**  
6 **Redistricting Via Constitutional Amendment**

7 Plaintiff’s claim that the Legislature’s passage of ACA 8, AB 604, and SB 280  
8 and placement of Prop 50 on the ballot somehow will result in malapportionment  
9 that violates his right to equal protection under the Fourteenth Amendment, Compl.  
10 ¶¶16-22, appears to be nothing more than a partisan gerrymandering claim based  
11 solely on a purported violation of California state law. That claim necessarily fails,  
12 as the Supreme Court in *Rucho* stated unequivocally that “partisan gerrymandering  
13 claims present political questions beyond the reach of the federal courts.” 588 U.S.  
14 at 718.

15 Moreover, Plaintiff is wrong that the Legislature “ignore[d] the California  
16 Supreme Court’s decision in *Deukmejian*,” Compl. ¶ 21, when it referred ACA 8’s  
17 proposal for mid-decade redistricting to the voters and placed Prop 50 on the  
18 ballot.<sup>9</sup> Nothing in California law prohibits California voters from choosing to  
19 change the manner or time in which the State redistricts so long as they do so by  
20 way of a constitutional amendment. In interpreting the predecessor to today’s  
21 article XXI, which provided for decennial redistricting by the Legislature, the  
22 California Supreme Court unequivocally stated that “[t]he people of [California], as  
23 the ultimate source of legitimate political power, are of course free through  
24 *constitutional amendment* to adopt whatever changes in the existing system they  
25 consider appropriate, subject only to limitations contained in the Constitution of the  
26 United States.” *Deukmejian*, 34 Cal. 3d at 680 (emphasis added). The Court also  
27 held that mid-cycle congressional redistricting via “the people’s reserved power of

28 <sup>9</sup> Perhaps realizing this claim lacks merit, Plaintiff never cites *Deukmejian* in his motion for a preliminary injunction.

1 [statutory] initiative” was not permitted under the then-existing article XXI. *Id.* at  
2 663, 674-75. However, Prop 50 proposes that voters adopt a constitutional  
3 amendment authorizing mid-cycle redistricting, which the California Supreme  
4 Court expressly held was permissible in *Deukmejian*. *Id.* at 680.

5 Because a legislatively referred constitutional amendment has no effect unless  
6 and until a majority of California voters approve it, ACA 8 will not be adopted, and  
7 no redistricting will occur, if the voters do not approve Prop 50. Providing for a  
8 statewide special election on whether to amend the California Constitution and  
9 officially adopt the map proposed in AB 604 is squarely within the Legislature’s  
10 authority under the California Constitution. Cal. Const. art. XVIII, § 1.

11 Moreover, the fact that the *current* version of the California Constitution  
12 prescribes decennial, nonpartisan redistricting by the Commission, *see* Cal. Const.  
13 art. XXI, §§ 1, 2(e), does not restrain the California electorate’s ability to adopt via  
14 constitutional amendment a new congressional map mid-decade that takes partisan  
15 or political considerations into account. The text of ACA 8, if adopted by voters,  
16 would expressly amend article XXI of the California Constitution to provide for the  
17 temporary alternative redistricting procedure “notwithstanding any other provision  
18 of this Constitution or existing law.” ACA 8 § 4(b).

19 Neither does anything in the federal constitution prohibit California voters  
20 from adopting a new redistricting map mid-decade that was developed with some  
21 partisan considerations in mind. In rejecting the argument that partisan  
22 gerrymandering may provide a viable basis for a justiciable equal protection claim,  
23 the Supreme Court in *Rucho* acknowledged that “[t]o hold that legislators cannot  
24 take partisan interests into account when drawing district lines would essentially  
25 countermand the Framers’ decision to entrust districting to political entities.”  
26 *Rucho*, 588 U.S. at 701; *see also id.* at 700-01 (“while it is illegal for a jurisdiction  
27 to depart from the one-person, one-vote rule, or to engage in racial discrimination in  
28 districting, ‘a jurisdiction may engage in constitutional political gerrymandering’”

(citation omitted)).<sup>10</sup>

**B. Plaintiff’s “One Person, One Vote” Claim Fails as a Matter of Law**

Plaintiff claims that AB 604’s proposed congressional map, if adopted, will violate the one-person, one-vote principle because it was drawn using the 2020 decennial census data—the same data the Commission used to draw the current map—without accounting for intervening population changes. Compl. ¶¶ 11-15. Plaintiff asserts that the use of 2020 census data evidences the Legislature’s failure to make a good-faith effort to achieve mathematical equality in apportioning districts “in favor of intentionally disadvantaging political opponents and diluting voting power of Californians who reside in every district across the State.” Memo. at 14.

This theory of vote dilution fails as a matter of law, as there is no constitutional infirmity in the Legislature’s reliance on the last decennial census data in drawing AB 604’s proposed map or in its decision to redistrict mid-decade. If there were, then California’s existing congressional map—and that of every state in the country—necessarily must also violate the one-person, one-vote principle. And because use of the 2020 census data is the *only* basis Plaintiff offers for his malapportionment theory, Plaintiff does not and cannot raise any serious question warranting a preliminary injunction.

As an initial matter, Plaintiff asks the Court to subject Defendants to a legal standard and evidentiary burden that do not apply in one-person, one-vote cases. Without citing a single case in support, Plaintiff argues that Defendants must show by “clear and convincing evidence that [the districts described in AB 604] are relatively equal in population or if unequal, that the discrepancy serves a legitimate

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<sup>10</sup> Plaintiff’s reliance on *Gill* to support any argument that the Court may find an equal protection violation based solely on a state’s consideration of partisan matters in redistricting is misplaced, as *Gill* was decided before *Rucho* unequivocally confirmed that partisan gerrymandering claims are nonjusticiable.

1 governmental purpose.” Memo. at 16; *see also* Memo. at 14, 19-22; ECF No. 17 at  
2 2. Plaintiff cites pre-*Rucho* caselaw in an apparent attempt to suggest that *any* maps  
3 drawn mid-decade with partisan considerations in mind must be presumed to lack  
4 legitimate justifications because they do not reflect an “‘honest and good faith  
5 effort’ to [] fashion roughly equal population within congressional districts.”  
6 Memo. at 15.

7 This is not the applicable standard. It is the “[p]arties challenging  
8 apportionment legislation [who] must bear the burden of proof on this issue.”  
9 *Karcher*, 462 U.S. at 730-31. The burden shifts to Defendants to “show with some  
10 specificity” that the population differences “were necessary to achieve some  
11 legitimate state objective” *only* if Plaintiff meets his threshold “burden of proving  
12 the existence of population differences that ‘could practicably be avoided.’”  
13 *Tennant*, 567 U.S. at 760. This, Plaintiff cannot do. Nor has he attempted to do so,  
14 failing even to provide any evidence allowing this Court to compare the current  
15 map with the proposed map.

16 The Supreme Court’s ruling in *LULAC*, which involved a nearly identical  
17 theory of malapportionment, compels rejecting Plaintiff’s claim. Like Plaintiff, the  
18 *LULAC* plaintiff theorized that voluntary “mid-decade redistricting for exclusively  
19 partisan purposes” using the latest decennial census data “violates the one-person,  
20 one-vote requirement” by unnecessarily creating “unlawful interdistrict population  
21 variances” based on unaccounted for shifts in population. 548 U.S. at 420-21. The  
22 *LULAC* plaintiff further argued that the state could not offer any legitimate  
23 justification to overcome the fact that the map was drawn, and population variances  
24 created, as “the product of partisan bias and the desire to eliminate all competitive  
25 districts.” *Id.* at 422.

26 Though the Court’s decision in the case was fractured, Justice Kennedy,  
27 writing for three justices, rejected the *LULAC* plaintiff’s theory, and two additional  
28 justices concurred in the result. *See id.* at 421-24 (Kennedy, J.); *id.* at 492-93

1 (Roberts, C.J. concurring in part, concurring in the judgment in part, and dissenting  
2 in part). Justice Kennedy first wrote that “the Constitution and Congress state no  
3 explicit prohibition” on “mid-decade redistricting to change districts drawn earlier  
4 in conformance with a decennial census[.]” *Id.* at 415. He explained that “States  
5 operate under the legal fiction that their plans are constitutionally apportioned  
6 throughout the decade,” and under that legal fiction, decennial redistricting plans  
7 are not considered unconstitutional “three or five years into the decade if the State’s  
8 population ha[s] shifted substantially.” *Id.* at 421.

9 Justice Kennedy further rejected the *LULAC* plaintiff’s attempt to subject  
10 voluntary mid-decade redistricting plans drawn with partisan motivations to an  
11 irrebuttable presumption of unconstitutionality where they rely on existing census  
12 data that might give rise to population variance. *Id.* at 421-22. In doing so, he  
13 reasoned that the plaintiff’s proffered standard turned “on the justification for  
14 redrawing a plan in the first place[.]” rather than “whether a redistricting furthers  
15 equal-population principles[.]” *Id.* at 422. Accordingly, Justice Kennedy  
16 concluded that the plaintiff’s theory did not give rise to a viable vote dilution claim  
17 or provide a reason to disregard the “legal fiction” that a map based on decennial  
18 census data is lawfully apportioned. *Id.* at 422-23; *accord id.* at 492-93 (Roberts,  
19 C.J., concurring in the conclusion that the plaintiff’s vote dilution theory regarding  
20 mid-decade redistricting using decennial census data did not provide any reliable  
21 standard for identifying an unconstitutional political gerrymander). And because  
22 the *LULAC* plaintiff, like Plaintiff here, could not establish an equal-population  
23 violation based on the use of the existing census data, “examination of the  
24 legislature’s motivations” was “[ir]relevant.” *Id.* at 422-23.

25 No justice dissented from Justice Kennedy’s conclusion that states may  
26 redistrict mid-decade using existing decennial census data rather than updated  
27 population data, even if the redistricting was motivated by partisan considerations,  
28 without running afoul of the Fourteenth Amendment. *Cf. id.* at 455 (Stevens, J.,

1 joined by Breyer, J., dissenting) (stating that the district court “correctly found that  
2 the Constitution does not prohibit a state legislature from redrawing congressional  
3 districts in the middle of a census cycle”).

4 Just twenty days ago, a district court in Texas entertaining identical arguments  
5 to those Plaintiff makes here rejected a challenge to Texas’s use of 2020 census  
6 data in conducting its mid-decade redistricting for partisan gerrymandering  
7 purposes. *See League of Latin American Voters v. Perry*, Case No. 3:21-cv-00259-  
8 DCG-JES-JVB, 2025 U.S. Dist. LEXIS 201647 (W.D. Tex. Sept. 30, 2025)  
9 (*Perry*). That district court adopted Justice Kennedy’s reasoning, explaining that,  
10 as in *LULAC*, “[i]f, due to the ‘legal fiction’ that maps based on the most recent  
11 census data remain lawfully apportioned until the next decennial census, post-  
12 census population shifts didn’t render the maps in *LULAC* unconstitutional, then  
13 post-census population shifts don’t render Texas’s 2025 congressional maps  
14 unlawful either.” *Id.* at \*19-20.

15 So, too, here. This Court should follow *LULAC*. As the *Perry* court  
16 emphasized, “no court has ever invalidated a [mid-decade] congressional  
17 redistricting plan” on the basis that the districts were drawn based on the latest  
18 decennial census data. *Id.* at \*22. And the Supreme Court has emphasized that  
19 census data provides a reliable “basis for good-faith attempts to achieve population  
20 equality.” *Karcher*, 462 U.S. at 726.

21 Finally, under AB 604’s map—permissibly drawn mid-decade using the 2020  
22 census data, *see LULAC*, 548 U.S. at 415, 421-24—Plaintiff’s district would not  
23 deviate from the ideal population target by even one person. *See supra* Argument §  
24 I.A. The proposed district in which Plaintiff claims to reside thus meets the  
25 standard his own consultant posits—that the “baseline is a deviation of no more  
26 than +/- 1 individual per district.” ECF No. 17-2 at 2. Because Plaintiff failed  
27 entirely to identify any deviation from the ideal district apportionment, “the  
28

1 apportionment scheme must be upheld” and Plaintiff’s improper attempt to shift his  
2 burden to Defendants must be rejected. *Karcher*, 462 U.S. at 731.

3 **III. PLAINTIFF FAILS TO SATISFY THE REMAINING PRELIMINARY**  
4 **INJUNCTION FACTORS**

5 As Plaintiff asserts entitlement to a preliminary injunction based on “serious  
6 questions” rather than likelihood of success on the merits, he faces a much heavier  
7 burden on the remaining factors. He must show not only likelihood of irreparable  
8 harm, but also that the balance of hardships “tips sharply in [his] favor.” *All. for*  
9 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). This is a bar he  
10 cannot reach. *SWVREP*, 344 F.3d at 919.

11 **A. Plaintiff Cannot Establish Irreparable Harm**

12 Plaintiff cannot show that “he is likely to suffer irreparable harm in the  
13 absence of” a preliminary injunction. *Winter*, 555 U.S. at 20 (2008). “Speculative  
14 injury does not constitute irreparable injury sufficient to warrant granting a  
15 preliminary injunction.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668,  
16 674 (9th Cir. 1988). As discussed above, Plaintiff has not identified *any* equal  
17 protection injury that would flow from the passage of Prop 50 and use of AB 604’s  
18 proposed map. *See supra* Argument §§ I.A., II.B. This failure is fatal to his  
19 motion.

20 Further, to the extent Plaintiff seeks an expedited order granting pre-election  
21 relief, his own failure to move expeditiously to secure a temporary restraining order  
22 or preliminary injunction in advance of the Special Election belies any contention  
23 that he would be irreparably harmed without one—especially since Plaintiff  
24 announced his intention to challenge the Special Election two full months before he  
25 filed his motion. “A preliminary injunction is sought upon the theory that there is  
26 an urgent need for speedy action to protect the plaintiff’s rights. By sleeping on its  
27 rights a plaintiff demonstrates the lack of need for speedy action[.]” *Lydo Enters.,*  
28 *Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (citations omitted).

**B. The Public Interest and Balance of the Equities Tip Sharply in Favor of Denying Interim Relief**

As to the remaining factors, Plaintiff fails to establish that the balance of the equities tips in his favor at all, much less *sharply* so. The Court must weigh the competing claims of injury by evaluating “the effect on each party of the granting or withholding of the requested relief.” *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987). The balance of harms and public interest factors merge since the government is a party. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

Issuing an injunction indefinitely barring California from implementing Prop 50, if voters approve it, would be tantamount to denying Californians a state constitutional right. Cal. Const. Art. XVIII, § 4 (giving voters power to amend the state constitution by approving legislatively referred constitutional amendments). And interim relief is particularly fraught with the election well underway, as voters have been voting for weeks. *Lean Decl.* ¶ 15; *SWVREP*, 344 F.3d at 919 (federal court “interference with an election after voting has begun is unprecedented”). An injunction would also cause enormous confusion, especially if the duration of the order is unclear. *Lean Decl.* ¶ 18. For example, voters and candidates would be unsure if the previous map applies for the June 2, 2026 Statewide Direct Primary Election. *Id.* And if the order lifted in the midst of the June 2026 Primary Election, the result would be chaotic. *Id.* State and local election officials would need make a monumental effort to ensure congressional districts and voter precincts are updated, determine how to treat votes that had already been cast based on the previous districts, and determine how to communicate the updates for voters. *Id.* Similarly, candidates would need to reevaluate their entire campaigns and duplicate efforts to ensure they run in the correct district. *Id.* The closer in time such a change occurs to the June 2026 Primary election, the more confusion and wasted efforts and resources would result. *Id.*

1 “These investments of time, money, and the exercise of citizenship rights  
2 cannot be returned,” and simply lifting the injunction would not restore the integrity  
3 of California’s electoral system. *SWVREP*, 344 F.3d at 919; Lean Decl. ¶ 21. Any  
4 delays in implementing Prop 50 if voters approve it would disrupt the June 2026  
5 Primary Election, as candidates must know which districts in which they should file  
6 and campaign so they may begin collecting signatures by mid-December. *Id.* ¶  
7 24.a.

8 Against these concrete irreparable harms to California, its people, and their  
9 right to self-govern, Plaintiff alleges only a speculative future harm unsupported by  
10 any evidence, claiming that if voters approve Prop 50 and congressional districts  
11 are redrawn, then the weight of his vote might be diluted in future congressional  
12 elections. Memo. at 20. Plaintiff asserts that “Defendants would suffer no harm  
13 other than the loss of time and effort to attempt to produce” evidence (on a standard  
14 that does not apply to them in malapportionment claims). *Id.*; *see supra* Argument  
15 § II.B. But “hardship falls not only upon the putative defendant,” but also “on all  
16 citizens of California, because this case concerns a statewide election.” *SWVREP*,  
17 344 F.3d 919. Plaintiff’s baseless claims cannot justify preventing the exercise of  
18 the people’s franchise, confusing and frustrating voters, and severely disrupting the  
19 electoral process in California. *See id.* at 918 (affirming decision denying an  
20 injunction request that would effectively halt an ongoing election); Lean Decl. ¶¶  
21 21, 25.

22 Finally, Plaintiff cannot salvage his request by misapplying a string of  
23 inapposite cases. Fatal to his argument that the *Purcell* principle authorizes this  
24 Court to grant interim relief, Plaintiff concedes that his injunction request “does not  
25 involve any change to the actual elections process within California.” Memo. at 9;  
26 *see Purcell v. Gonzalez*, 549 U.S. 1, \*4-6 (2006) (addressing timing of changing  
27 election rules and procedures). Rather, this case involves Plaintiff’s demand that  
28 the Court *halt altogether* an ongoing Special Election where the “State’s election

1 machinery is already in progress,” *Reynolds*, 377 U.S. at 585, to prevent all  
2 California voters from voting on a measure with which he disagrees.<sup>11</sup> This is not a  
3 challenge to election-related procedures that “do not necessarily result in the  
4 turning away of qualified, registered voters by election officials[.]” *Purcell*, 549  
5 U.S. at \*2.<sup>12, 13</sup>

## 6 CONCLUSION

7 For the foregoing reasons, Defendants respectfully request that the Court deny  
8 Plaintiff’s motion for preliminary injunction in its entirety.

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17 <sup>11</sup> Although the Court will hear Plaintiff’s motion two days after the Special  
18 Election, the results will not be certified until December 12, 2025. Lean Decl. ¶ 24.

19 <sup>12</sup> For this reason, Plaintiff’s other authorities addressing election rules do not  
20 support his case. *See* Memo. at 9-11. And *Fortson*, which challenged a legislative  
21 referral of a constitutional amendment by a malapportioned legislature, is plainly  
22 inapposite here. *Fortson v. Toombs*, 379 U.S. 621 (1965). Plaintiff does not  
23 challenge the composition of California’s Legislature and expressly disclaimed any  
24 challenge to California legislators’ authority to propose constitutional amendments  
25 for voter approval. Memo. at 10.

26 <sup>13</sup> Plaintiff requests a three-judge panel under 28 U.S.C. § 2284. Memo. at 2.  
27 However, the Court need not refer this case for assignment to a three-judge panel.  
28 Plaintiff’s lack of standing is one “ground upon which a single judge [can] decline[]  
to convene a three-judge court[.]” *Gonzalez v. Automatic Emp. Credit Union*, 419  
U.S. 90, 100 (1974). Plaintiff’s raising of claims that are “constitutionally  
insubstantial” is another ground. *Goosby v. Osser*, 409 U.S. 512, 518 (1973).  
Defendants will submit additional briefing addressing this topic, as raised in the  
Court’s October 20, 2025 order (ECF No. 37).

1 Dated: October 20, 2025

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants California Secretary of State Shirley Weber and Governor Gavin Newsom, certifies that this brief contains 6,876 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 20, 2025

Respectfully submitted,

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