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Attorney for Plaintiff, Steve Hilton

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA (SOUTHERN DIVISION)

STEVE HILTON,

Plaintiff,

v.

SHIRLEY WEBER, in her official capacity as California Secretary of State, GOV. GAVIN NEWSOM in his official capacity,

Defendants

And the LEGISLATURE OF CALIFORNIA,

Real Parties in Interest

Case No.: 8:25-cv-01988-KK-E
Hon. Kenly Kiya Kato

PLAINTIFF'S SUPPLEMENTAL BRIEFING ADDRESSING THE REQUIREMENTS OF ARTICLE III

Date: November 6, 2025
Time: 9:30 a.m.
Dept.: Courtroom 3, 3rd Floor

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I. INTRODUCTION

Plaintiff, Steve Hilton, filed this lawsuit to protect his individual rights to constitutional equal protection in congressional voting so his unique vote will be equal to the vote of every other citizen of California. This is an important right, one of the most important for any citizen, and this Court should adjudicate this issue.

Plaintiff has requested the following relief if, twelve days from today, the voters of California pass Proposition 50: "The court should enjoin the implementation of the new maps until the state can produce clear and convincing evidence that these maps are relatively equal in population, or if unequal, that the discrepancy serves a legitimate government purpose." (Motion for Preliminary Injunction p. 22)

Yes, evaluating the legitimacy of a redistricted congressional map is a controversial and complicated issue, but to paraphrase Justice Kagan, "a Court should not refuse to remedy a constitutional violation because it thinks the task is beyond its judicial capabilities." *Rucho v. Common Cause*, 588 U.S. 684, 733 (2019) (Kagan, dissenting).

II. QUESTIONS PRESENTED BY THE COURT

1. Does Plaintiff Steve Hilton have standing to bring these claims in federal court?

2. Do these claims raise a substantial federal question that requires a three-judge panel?

3. Are these claims ripe for adjudication?

III. ANSWERS PRESENTED BY PLAINTIFF

1. Plaintiff has standing to bring these claims in federal court.

Article III of the U.S. Constitution limits federal courts' jurisdiction to "Cases" and "Controversies." *Murthy v. Missouri*, 603 U.S. 43, 56 (2024). Accordingly, the U.S. Supreme Court has long held that the plaintiff, as the party invoking federal jurisdiction, must have a personal stake in litigation sufficient to make out a concrete

"case" or "controversy" to which the federal judicial power may extend. *Id.* This "personal stake" gives plaintiff his standing.

Article III standing requires the plaintiff to show – for each claim asserted and for each form of relief sought – that he has suffered (or is imminently threatened with) an injury that is "concrete and particularized," there is a causal connection between that injury and the defendant's conduct, and a favorable judicial decision will likely redress that injury. *Murthy*, 603 U.S. at 57. Once a plaintiff satisfies those elements, the action presents a case or controversy that is properly within federal courts' Article III jurisdiction. *Id*.

Plaintiff will suffer a concrete and particularized injury under the new District 15 map.

Plaintiff has an equal protection claim to have his Congressional vote count the same as the vote of every other citizen. That is the essence of the "one-person one-vote" rule that is a bedrock of our democracy. *Reynolds v. Sims* 377 U.S. 533 (1964). Federal law requires each state to map each of its congressional districts to be "as nearly as practicable equal" in population. *Harris v. Arizona Independent Redistricting Com'n*, 578 U.S. 253, 258 (2016); *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-531 (1969); *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964). If a district does not meet that equality standard, the state must justify that discrepancy by showing the discrepancy was necessary for some constitutionally valid purpose. *See Wesberry, 376* U.S. at 7. The *Rucho* Court said "the one-person one-vote rule is relatively easy to administer as a matter of math." *Rucho*, 588 U.S. at 708.

Furthermore, Plaintiff currently resides in Congressional District 16. The Proposition 50 maps will move him into District 15. Plaintiff has pleaded and provided a declaration of a redistricting expert demonstrating that it is highly unlikely that the State has met the population equality standard in District 15 or any of the other 51 proposed new districts in California. *See* Complaint p. 4 and the Expert

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Declaration attached to Plaintiff's Motion for Preliminary Injunction. The state used five-year-old data and did not account for the multiple shifts in population in and out of the state and in and out of each district. *Id.*

Plaintiff is imminently threatened with this injury in fact because, in 12 days, there is a better than even chance that the voters will approve a new Congressional District 15 map for Plaintiff and his neighbors. He has plead facts to show that it is highly unlikely that this new District 15 will meet the constitutional standards of population equality. Without this population equality, it's highly likely Plaintiff will be harmed by "vote dilution." This injury arises when a district's boundaries devalue one citizen's vote as compared to others. Vote dilution can be accomplished by "packing" certain voters into a few districts, so they win elections by large margins, or "cracking" certain voters among several districts, so they fail to achieve a voting majority. *Gill v. Whitford*, 585 U.S. 48 (2018).

The U.S. Supreme Court requires plaintiffs to allege injuries to their interests as voters in individual districts in order to establish standing to sue upon a claim of unconstitutional gerrymandering on the basis of vote dilution. *Gill*, 585 U.S. at 50. The Supreme Court held in *Gill* that residents of a partisan gerrymandered district had standing to challenge the constitutionality of that district. *Id.* at 51. Similarly, residents of a racially gerrymandered district have standing to challenge the constitutionality of that district. *United States v. Hays*, 515 U. S. 737, 744–745 (1995).

In addition to his vote dilution claim, Plaintiff's forced displacement from Congressional District 16 into the new District 15 threatens him with other personal injuries. He is forced to move from a known member to an unknown member of Congress. It limits his opportunities to run for office in his familiar neighborhoods. As a taxpayer, he is harmed by the State expending public funds on improper districts.

Yes, these are all fact-specific matters, but at this stage of the pleading, the Court should not substitute its judgment for that of the ultimate trier of fact. *See Khoja*

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v. Orexigen Therapeutics, Inc., 899 F.3d 988, 1003 (9th Cir. 2018) (holding that courts do not resolve factual disputes at the pleading stage). Plaintiff should be given the opportunity to seek discovery from the State to determine the scope of these potential problems. Under Ninth Circuit precedent, when a defendant brings a factual challenge to Article III standing (and therefore jurisdiction) and the jurisdictional and merits questions are "intertwined", the court must treat the motion like a motion for summary judgment and "leave the resolution of material factual disputes to the trier of fact." *Beth Bowen v. Energizer Holdings* 118 F.4th 1134 (9th Cir. 2024)

There is a causal connection between Plaintiff's injuries and Defendants' conduct.

Plaintiff has plead this causal connection in his complaint and in his Motion for Preliminary Injunction. Governor Newsom proposed Proposition 50 and is actively campaigning to pass it. Secretary of State Weber determined that Proposition 50 was suitable for the ballot and placed it on the ballot. Together they will implement and enforce Proposition 50 after it passes. They will work with the Registrar of Voters of each County to implement the new maps for the 2026, 2028, and 2030 congressional elections. (Complaint, p. 1; Motion, p.5)

A favorable judicial decision will likely redress or prevent Plaintiff's injuries. Plaintiff has requested that this court enjoin the implementation of the new maps until the State can produce clear and convincing evidence that these maps are relatively equal in population, or if unequal, that the discrepancy serves a legitimate government purpose. If the State can produce this evidence, and the State proceeds accordingly, it would mitigate Plaintiff's threatened harm. Or, in the alternative, if the State can't produce this evidence, and the Court orders the State to acquire new data to redraw the map of District 15 accordingly, that would also mitigate Plaintiff's threatened harm.

Plaintiff adequately plead standing, but if not, he requests leave to amend his complaint.

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Plaintiff has plead, and should be given the opportunity to prove, that he has Article III Constitutional standing, because these imminent threats of harm give him a personal stake in this litigation sufficient to make out a concrete "case" or "controversy" to which the federal judicial power may extend. However, if the Court believes he hasn't fully communicated his basis for standing, the Plaintiff requests leave to amend his Complaint to fix those issues. *See Morongo Band of Mission Indians v. Cal. State. Bd. of Equalization*, 858 F.2d 1376, 1380, n. 3 (9th Cir. 1988)

2. Plaintiff's claims raise substantial federal questions for jurisdictional purposes that require a three-judge panel.

Plaintiff's claims invoke the constitutional protections of the equal protection clause. He has explicitly pleaded these claims based on vote dilution, on racial gerrymandering, and on partisan gerrymandering, and (implicitly) on viewpoint discrimination. These are all claims based on constitutional rights. They all involve challenges to the constitutional legitimacy of the new Proposition 50 map for Plaintiff's new home District 15. They are all "substantial" constitutional rights that raise federal questions and justify a serious review by this Court.

Therefore, they all are justiciable in a federal court and meet the standard for a three-judge panel described in *Shapiro v. McManus*, 577 U.S. 39, 45-46 (2015). In *Shapiro*, the U.S. Supreme Court said:

> Section 2284(a)'s prescription could not be clearer. Because the present suit is indisputably an action challenging the constitutionality of the apportionment of congressional districts," the District Judge was required to refer the case to a three-judge court. Section 2284(a) admits of no exception, and the mandatory 'shall' normally creates an obligation impervious to judicial discretion. The subsequent provision of §2284(b)(1), that the district judge shall commence the process for appointment of a three-judge panel "unless he determines that three judges are not required," should be read not as a grant of discretion to the district judge to ignore §2284(a), but as a compatible administrative detail requiring district judges to determine only whether the request for three judges is made in a case covered by §2284(a). This conclusion is bolstered by

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> 2284(b)(3)'s explicit command that "a single judge shall not enter judgment on the merits." (Emphasis added.)

Furthermore, all these claims raise substantial federal questions for jurisdictional purposes under *Goosby v. Osser*, 409 U.S. 512 (1973). This Court asked the parties to address whether Plaintiff's claims raise a federal question for jurisdictional purposes under *Goosby*. Plaintiff answered that question above but will point out that *Goosby* supports Plaintiff's position. The District Court judge in *Goosby* did not give the benefit of the doubt to plaintiff's complaint to determine whether there was a federal question that established jurisdiction. In *Goosby*, the Supreme Court rejected this approach saying:

> 'Constitutional insubstantiality' for this purpose has been equated with such concepts as 'essentially fictitious,' 'wholly insubstantial,' 'obviously frivolous,' and 'obviously without merit.' The limiting words 'wholly' and "obviously" have cogent legal significance…. [T]hose words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. § 2281. A claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy…

Id. at 518. (Internal citations omitted.) The *Goosby* court noted that "[t]he existence of a substantial question of constitutionality must be determined by the allegations of the bill of complaint. In the present procedural posture of petitioners' case, the allegations of their complaint must be deemed to be true." *Id.* at n. 7 (Emphasis added.) (Internal citations omitted.)

There is no federal case that absolutely prohibits Plaintiff from making a vote dilution challenge or a race-based challenge to a new congressional map.

Even the Supreme Court's decision in *Rucho* didn't eliminate all possible claims based on partisan gerrymandering. The majority in *Rucho* said: "No one can

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accuse this court of having a crabbed view of the reach of its competence. But we have no commission to allocate power and influence in the absence of constitutional directive or legal standards to guide us in the exercise of such authority." *Rucho,* 588 U.S. at 721. Plaintiff asks this federal district court to use the facts of our case to identify a new legal standard to identify unconstitutional hyper-partisan gerrymandering. Justice Kagan issued a call to action in her *Rucho* dissent:

> For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities. And not just any constitutional violation. The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives. In so doing, the partisan gerrymanders here debased and dishonored our democracy, turning upside-down the core American idea that all governmental power derives from the people…. If left unchecked, gerrymanders like the ones here may irreparably damage our system of government. And checking them is *not* beyond the courts. The majority's abdication comes just when courts across the country have coalesced around manageable judicial standards to resolve partisan gerrymandering claims. *Rucho*, 588 U.S. at 722-23 (Kagan, dissenting).

3. Plaintiff's claims are ripe for adjudication.

Introduction to the Ripeness Question. The ripeness doctrine is "designed to ensure that courts adjudicate live cases or controversies and do not 'issue advisory opinions or declare rights in hypothetical cases.'" *Bishop Paiute Tribe v. Inyo Cty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (quoting *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138). Because the ripeness doctrine derived both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction, the inquiry has often involved both a constitutional and a prudential component. *Safer Chems. Healthy Families v. EPA*, 943 F.3d 397, 411 (9th Cir. 2019).

Plaintiff's claims meet the standard for Constitutional Ripeness. To satisfy the

Constitutional ripeness requirement, a case must "present issues that are definite and concrete, not hypothetical or abstract." *Bishop*, 863 F.3d at 1153 (citations omitted). "Constitutional ripeness is often treated under the rubric of standing because ripeness coincides squarely with standing's injury in fact prong." *Id.*

In measuring whether the litigant has asserted an injury that is real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing. *Thomas v. Haley*, 220 F.3d 1134, 1139 (9th Cir. 2000). Where the sufficiency of a showing of injury-in-fact is grounded in potential future harms, the analysis for both standing and ripeness is essentially the same. *Coons v. Lew*, 762 F.3d 891, 897 (9th Cir. 2014).

Plaintiff will not repeat his standing arguments discussed above but will affirm the same facts and arguments give him claims that are constitutionally ripe for review.

Plaintiff's claims meet the standard for Prudential Ripeness. Prudential ripeness considerations are discretionary. *Thomas*, 220 F.3d at 1137. However, this discretion is not unlimited because a federal court has a "virtually unflagging" obligation to adjudicate federal claims within its jurisdiction. *Colorado River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976). Federal courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). The Ninth Circuit has previously declined to reach prudential ripeness when constitutional ripeness is satisfied. *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1031 (N.D. Cal. 2018).

If this court wants to consider prudential ripeness, it must be guided by two overarching considerations: the fitness of the issues for judicial decision; and the hardship to the parties of withholding court consideration. *Stavrianoudakis v. United States Fish and Wildlife Service*, 108 F.4th 1128, 1139 (2024). Prudential ripeness is designed to be discretionary to allow a court to fine-tune the decision-making process.

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It carries the banner of prudence rather than power. Prudential ripeness is based on settled rules of self-restraint. Prudential ripeness is not required by Article III but it is a "judicially created overlay." Gene R. Nichol, Jr., *Ripeness and the Constitution*, 54 U. Chi. L.Rev. 153, 155 (1987).

Plaintiff will not repeat the individual and harmful impacts on his federal equal protection rights caused by moving him from his current District 16 into a new statistically suspect District 15. But, he will discuss why it's imprudent for the court to dismiss this case 12 days before the election and require the plaintiff to re-file and re-serve the complaint 13 days from now. This will be costly (in money and time) for both parties and the Court. Why shut down the machinery of this case just to start it up again in less than two weeks? *See, e.g., Thorsted v. Gregoire*, 841 F.Supp. 1068, 1074 (W.D. Wa. 1994) (concluding election law case was ripe for adjudication where delaying review of an Initiative "would not only inflict uncertainty on the parties and the public, but would risk a failure to complete review by [higher courts] before winners were later sworn into office.)

The Court and the Parties should also acknowledge the following:

CBS News published its polling results on October 22, 2025, showing that 63% of likely voters were voting yes on Proposition 50.

See (https://www.cbsnews.com/news/cbs-news-poll-california-prop-50-redistricting-trump/)

If the voters reject Proposition 50 at the polls on November 4, 2025, Plaintiff will dismiss his case. But that outcome is not likely.

IV. CONCLUSION

The next step in this case is either: (1) The Court retains jurisdiction of this case; or (2) if the Court determines that Plaintiff's Complaint (when read with his Motion for Preliminary Injunction) is defective, then Plaintiff asks for 15 days leave to amend the Complaint. Pursuant to *Federal Rule of Civil Procedure* 15(a), leave to

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amend "shall be freely given when justice so requires." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010). Accordingly, it is black-letter law that a district court must give a plaintiff at least one chance to amend a deficient complaint. *Barke v. Banks*, 25 F.4th 714, 721 (9th Cir. 2022).

Plaintiff is aware of other lawsuits that are being prepared to be filed should Proposition 50 pass that will also require a three-judge panel. *See, e.g., League of United American Citizens v. Green*, EP-21-CV-00259-DCG-JES-JVB. Even before the Texas maps were passed and signed by the governor, and before the plaintiffs' had supplemented their complaints, the three-judge panel in Texas was scheduling a hearing for the pending injunction where facts were not yet fully ascertained. As Proposition 50's legislative history shows, the proposed redistricting is a direct response to Texas' proposed redistricting efforts. This Court should also assemble a three-judge panel ahead of Election Day to ensure that all these Proposition 50 issues can be timely litigated prior to candidates having to pull papers.

DATED: October 23, 2025

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By: */s/ John W. Howard*
John W. Howard

Attorney for Plaintiff,
Steve Hilton

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CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed by JW Howard/Attorneys, LTD. in the County of San Diego, State of California. My business address is 600 West Broadway, Suite 1400, San Diego, California 92101.

On October 24, 2025, I electronically filed the **PLAINTIFF'S SUPPLEMENTAL BRIEFING ADDRESSING THE REQUIREMENTS OF ARTICLE III** and served the documents using the Court's Electronic CM/ECF Service which will send electronic notification of such filing to all registered counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 24, 2025 at San Diego, California.

/s/ Dayna Dang
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