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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

STEVE HILTON, Plaintiff, **v.** **SHIRLEY WEBER, in her official capacity as California Secretary of State, GOVERNOR GAVIN NEWSOM, in his official capacity,** Defendants.	8:25-cv-01988-KK-E **DEFENDANTS' SUPPLEMENTAL BRIEF OPPOSING PLAINTIFF'S REQUEST FOR THE APPOINTMENT OF A THREE-JUDGE PANEL** Date: Nov. 6, 2025 Time: 9:30 a.m. Courtroom: 3 Judge: Hon. Kenly Kiya Kato Action Filed: Sept. 4, 2025

INTRODUCTION

Invoking 28 U.S.C. § 2284, Plaintiff has asked this Court to convene a three-judge panel to consider his challenge to California Proposition 50. ECF No. 36. This Court has since directed the parties to file supplemental briefing on this topic. ECF No. 37. Noting that a three-judge panel is not required where the district court itself lacks jurisdiction or the complaint is not justiciable in the federal courts, the Court asked the parties to brief whether Plaintiff has standing, whether his claims are ripe for review, and whether he has a raised a federal question for jurisdictional purposes. *Id.* Defendants address all three topics in this brief, focusing particularly on standing and federal-question jurisdiction. Because Plaintiff has not established any of the three prerequisites to standing, nor even raised a substantial federal question for jurisdiction purposes, the Court should decline to convene a three-judge panel in this matter.

ARGUMENT

I. A THREE-JUDGE PANEL IS NOT REQUIRED WHERE THE DISTRICT COURT LACKS JURISDICTION OR THE COMPLAINT IS NOT JUSTICIABLE

Twenty-eight U.S.C. § 2284(a) provides that "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts. . . ." But the Supreme Court has explained "'[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts.'" *Shapiro v. McManus*, 577 U.S. 39, 44-45 (2015) (quoting *Gonzalez v. Automatic Emp. Credit Union*, 419 U.S. 90, 100 (1974)). A district court thus, as relevant here, need not convene a three-judge panel when a plaintiff lacks standing, the plaintiff's claims are not ripe for review, or the plaintiff fails to raise a substantial federal question for jurisdictional purposes. *See Shapiro*, 577 U.S. at 45 (a court can decline to convene a three-judge panel when a plaintiff fails to raise a

substantial federal question for jurisdictional purposes); *Gonzalez*, 419 U.S. at 100 (a court can decline to convene a three-judge panel when a plaintiff lacks standing).

II. PLAINTIFF LACKS STANDING

Plaintiff lacks Article III standing to challenge Proposition 50, as discussed in more detail in Defendants' opposition to Plaintiff's motion for a preliminary injunction, ECF No. 39 at 8-12. To establish standing, "a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). Plaintiff cannot establish any of these elements, making it unnecessary to convene a three-judge panel here.

First, Plaintiff cannot show that he has suffered any injury-in-fact—that is, he cannot show he has suffered an injury to a legally protected interest that is concrete, particularized, and actual or imminent. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiff attempts to show the requisite injury based on alleged malapportionment violating the one-person, one-vote principle. He suggests that because some people must have moved, died, or been born since the last census, it is possible that the population of his district might have changed relative to other districts. ECF No. 17-1 at 17-18. He then argues that if Proposition 50 is passed and implemented, the resulting malapportionment "will dilute every California's voting power by creating congressional districts that do not comply with the 'one-person, one-vote' principle because they are not comprised of roughly equal population based on any accurate and current data." *Id.* at 20.

But Plaintiff misunderstands malapportionment and provides no evidence to show injury under this theory. Malapportionment under the one-person, one-vote principle involves the unequal distribution of people across district lines, resulting in citizens in less-populated districts having votes that carry more weight than

citizens in more-populated districts. *See Reynolds v. Sims*, 377 U.S. 533, 562-563 (1964). By its very definition, then, malapportionment cannot "dilute every California's voting power," as Plaintiff believes. ECF No. 17-1 at 20. And precluding a finding of injury here, Plaintiff provides no evidence to show that the value of citizens' votes in District 15—Plaintiff's district—would be diluted relative to citizens in other districts if Proposition 50 passes. *See Election Integrity Project California, Inc. v. Weber*, 113 F.4th 1072, 1087 (9th Cir. 2024) ("Vote dilution in the *legal* sense occurs only when disproportionate weight is given to some votes over others within the same electoral unit." (Emphasis in original)).

Plaintiff fails to provide even the most basic data to compare the current congressional district map with the proposed congressional district map under Proposition 50. For example, he does not provide either the current or proposed congressional map for District 15, does not describe the differences between these maps, and provides nothing to compare these maps to those for other districts. And to the extent he provides anything on this topic, he suggests that the value of his vote will now carry more weight, not less, having provided a declaration suggesting that District 15 has decreased in size relative to other districts. *See* ECF No. 17-2 at 3 (relying on survey data to state that San Francisco's size has decreased since the 2020 census); ECF No. 39 at 11 (showing that District 15 covers part of San Francisco). Plaintiff's bare speculation that his vote would nonetheless be diluted is not enough to establish injury-in-fact. *See Trump v. New York*, 592 U.S. 125, 131 (2020) (speculation about harm is insufficient to support standing); *see also Murthy v. Missouri*, 603 U.S. 43, 67 n.7 (2024) ("*plaintiffs* bear the burden to establish standing by setting forth 'specific facts'" (emphasis in original)).[1]

[1] Plaintiff's attempt to challenge proposed congressional lines statewide is more problematic still. He alleges that he resides in *a* congressional district in California, and he then attempts to challenge proposed maps for *all* congressional districts in California covered in Prop 50, arguing that potential redistricting under Prop 50 could result in the dilution of his vote and the votes of others. ECF No. 1 ¶¶ 11, 22; ECF No. 17-1 at 20. But when, as here, the "alleged harm is the dilution (continued…)

Second, Plaintiff cannot establish causation. To establish causation, a plaintiff must show that the alleged injury "fairly can be traced to the challenged action of the defendant. . . ." *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976). Here, Plaintiff's claimed injury is premised on the use of 2020 census data that he claims are outdated and do not reflect current population distributions. ECF No. 17-1 at 13; ECF No. 1 at ¶ 11. But whether or not voters approve Proposition 50, congressional districts will still be based on 2020 census data. Existing congressional district maps, after all, were drawn using these very data. Any alleged injury from the use of the 2020 census data, then, cannot fairly be traced to the Legislature's decision to put Proposition 50 to the voters.

Third, and similarly, Plaintiff cannot establish redressability. To satisfy the redressability requirement, a plaintiff must show that the alleged injury is likely to be redressed by a favorable judicial decision. *Carney v. Adams*, 592 U.S. 53, 58 (2020). But even if this Court granted Plaintiff all the relief he sought, congressional districts would still be based on 2020 census data. So the claimed source of his injury—the use of allegedly outdated census data—would remain unaddressed. Plaintiff may still desire to debate the propriety of using new congressional district maps in California, but the constitutional role of the courts is to decide concrete cases, not to serve as a general forum for policy debates. *See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) ("[The requirement of standing] tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action").

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of [an individual's] votes, that injury is district specific" and any remedy "lies in the revision of the boundaries of the individual's own district." *Gill v. Whitford*, 585 U.S. 48, 66 (2018). Plaintiff's objection beyond his own district is "only a generalized grievance against governmental conduct" and inadequate to support standing. *Id.*; *see also Warth v. Seldin*, 422 U.S. 490, 509, 514 (1975) (litigants generally cannot "attempt to raise putative rights of third parties").

III. THE COURT NEED NOT SEPARATELY ADDRESS RIPENESS

The Court need not address ripeness when, as here, a plaintiff cannot allege facts supporting any element of Article III standing, including the requisite injury in fact. "Constitutional ripeness is often treated under the rubric of standing because 'ripeness coincides squarely with standing's injury in fact prong.'" *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1153 (9th Cir. 2017) (citation omitted.) Like injury in fact, ripeness requires that the plaintiff "present issues that are 'definite and concrete, not hypothetical or abstract.'" *Id.* (citation omitted). "Sorting out where standing ends and ripeness begins is not an easy task." *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000). Where, as here, "the alleged injury is too 'imaginary' or 'speculative' to support jurisdiction," the Court "need not delve into the nuances of the distinction between the injury in fact prong of standing and the constitutional component of ripeness[.]" *Id.* at 1139.

IV. PLAINTIFF HAS FAILED TO RAISE A SUBSTANTIAL FEDERAL QUESTION

Plaintiff has also failed to raise a federal question for jurisdictional purposes in his two alleged counts, providing another ground for rejecting his request. "[I]n the absence of diversity of citizenship, it is essential to jurisdiction that a *substantial* federal question should be presented." *Shapiro*, 577 U.S. at 45 (emphasis in original). A plaintiff raising only claims that are "constitutionally insubstantial" has not raised a substantial federal question. *Id.* at 44. Describing the meaning of the phrase "constitutionally insubstantial," the Supreme Court has explained that it does not simply mean that a litigant has failed to state a claim for relief on the merits. *Id.* at 45. It instead "has been equated with such concepts as 'essentially fictitious,' 'wholly insubstantial,' 'obviously frivolous,' and 'obviously without merit.'" *Goosby v. Osser*, 409 U.S. 512, 518 (1973) (citations omitted). A district court considering such constitutionally insubstantial claims can decline to convene a three-judge panel, *id.*, including when, as here, the alleged claims are clearly foreclosed by controlling precedent, *Ex parte Poresky*, 290 U.S. 30, 32 (1933).

A. Count One in Plaintiff's Complaint Is Constitutionally Insubstantial

In count one, Plaintiff alleges that Proposition 50, if approved and implemented, will result in a violation of the one-person, one-vote principle. ECF No. 1 at ¶ 12. That is so, he claims, because the proposed congressional district map under Proposition 50 is drawn for partisan reasons using outdated census data from 2020. ECF No. 17-1 at 13. But as discussed in Defendants' opposition to Plaintiff's motion for a preliminary injunction, ECF No. 39 at 15-17, litigants in *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (*LULAC*) unsuccessfully raised this very same type of claim. They argued "that mid-decade redistricting for exclusively partisan purposes violates the one-person, one-vote requirement," reasoning that population shifts since the previous census "created unlawful interdistrict population variances." *Id.* at 420-21 (opinion of Kennedy, J.). But the Court rejected this claim. And although the Court's decision was fractured based on other considerations involving the justiciability of partisan gerrymandering claims,[2] no justice found the claim based on the one-person, one-vote principle had merit.

Three justices found that States operate under the "legal fiction" that census figures remain accurate throughout the decade between censuses, *id.* at 421, and that States do not lose the benefit of this legal fiction simply because they have redistricted mid-decade for allegedly partisan reasons, *id.* at 422. *See also id.* at 483 (Souter, J., concurring in part) ("rejecting the one-person, one-vote challenge . . . based simply on its mid-decade timing"). Two more justices found "the Constitution does not prohibit a state legislature from redrawing congressional districts in the middle of a census cycle." *Id.* at 455 (Stevens, J., concurring in part and dissenting in part). And the remaining four justices found no viable claim. *See*

[2] More recently, the Supreme Court "conclude[d] that partisan gerrymandering claims present political questions beyond the reach of the federal courts." *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019).

id. at 492-93 (Roberts, C.J., concurring in part, concurring in the judgment in part, and dissenting in part) (agreeing in the result on this claim "without specifying whether appellants have failed to state a claim on which relief can be granted, or have failed to present a justiciable controversy"); *id.* at 511 (Scalia, J., concurring in the judgment in part and dissenting in part) (finding "claims of unconstitutional partisan gerrymandering do not present a justiciable case or controversy").[3]

Not one justice, then, found that this challenge to mid-decade redistricting based on the one-person, one-vote principle—the same type of challenge Plaintiff raises here—had any merit. *LULAC* thus shows that Plaintiff's claim is obviously without merit, constitutionally insubstantial, and inadequate to raise a substantial federal question for jurisdictional purposes. A contrary finding requiring California to account for population shifts since the 2020 census, moreover, would not only defy *LULAC*; it would also render California's existing congressional map—and that of every state in the country—unconstitutional under the one-person, one-vote principle. And worse still, no state would be able to resolve this problem with a mid-decade census, for federal law provides that "[i]nformation obtained in any mid-decade census shall not be used for apportionment of Representatives in Congress among the several States, nor shall such information be used in prescribing congressional districts." 13 U.S.C. § 141 (e)(2).

Apart from being clearly foreclosed by longstanding controlling precedent, Plaintiff's claim also lacks any factual grounding. He has supplied no evidence, nor even nonconclusory allegations, showing that the value of his vote would be diluted if Proposition 50 were approved and implemented. *See Karcher v. Daggett*, 462

[3] *See also Georgia v. Ashcroft*, 539 U.S. 461, 489 n.2 (2003) ("before the new census, States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned"); *League of Latin American Voters v. Perry*, Case No. 3:21-cv-00259-DCG-JES-JVB, 2025 U.S. Dist. LEXIS 201647 (W.D. Tex. Sept. 30, 2025) (rejecting the "argument that the Texas Legislature violated the one-person, one-vote rule by basing its mid-decade redistricting on the 2020 census rather than a more recent population"; "it is well-settled that the decennial census is presumed accurate" and "[t]his legal fiction makes apportionment reliable—regardless of when the apportionment occurs").

U.S. 725, 730-31 (1983) (parties challenging apportionment legislation bear the burden to show "population differences among districts [that] could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population"). And as Defendants explained in their opposition to Plaintiff's motion for a preliminary injunction, the existing data show that under the proposed congressional district map, Plaintiff's district population would deviate by no more than one person from other district populations. ECF No. 39 at 5, 11. Both in terms of the law and the facts, then, Plaintiff's claim fails to raise a substantial federal question for jurisdictional purposes.

In being clearly foreclosed by Supreme Court precedent and federal law, Plaintiff's claim is not merely without merit; it is "'obviously without merit'" and constitutionally insubstantial. *Goosby*, 409 U.S. at 518; *see also Ex parte Poresky*, 290 U.S. at 32 (no substantial federal question when the alleged claim is clearly foreclosed by controlling precedent); *Hannis Distilling Co. v. City of Baltimore*, 216 U.S. 285, 288 (1910) (no substantial federal question when a claim's "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"). And so while "'[c]onstitutional claims will not lightly be found insubstantial for purposes of' the three-judge-court statute," *Shapiro*, 577 U.S. at 45, this Court can readily make this finding here.

B. Count Two in Plaintiff's Complaint Is Constitutionally Insubstantial

In count two, Plaintiff suggests that the Legislature's placement of Proposition 50 on the ballot violates California law—as described in *Legislature v. Deukmejian*, 34 Cal. 3d 658, 680 (1983)—and consequently violates the Fourteenth Amendment's Equal Protection Clause. ECF No. 1 at ¶¶ 16-22. In his telling, the California Supreme Court in *Deukmejian* held that the California Constitution "limits redistricting to once a decade and cannot be changed by legislative action or

through the initiative process." ECF No. 1 at 7. But *Deukmejian* itself explicitly rejects Plaintiff's position, as discussed in Defendants' opposition to Plaintiff's motion for a preliminary injunction. ECF No. 39 at 13-14.

The California Constitution contemplates two general types of initiatives—statutory initiatives and constitutional initiatives. Cal. Const., art. II, § 8(a). The California Supreme Court in *Deukmejian* focused on the former. It found unconstitutional a proposed *statutory* initiative that sought to change legislative and congressional district boundaries after the Legislature had already done so. 34 Cal. 3d at 663. It reasoned that the proposed initiative violated former article XXI of the California Constitution, which the court construed to allow redistricting only once per decade following a federal census. *Id.* at 669-72.

But none of this helps Plaintiff here. Plaintiff is not challenging a proposed *statutory* initiative to draw new congressional district boundaries; he is instead challenging a proposed *constitutional* amendment. And nothing in *Deukmejian* suggests that the people of California lack authority to amend the California Constitution to allow more than one redistricting in a 10-year period. To the contrary, the *Deukmejian* court explained that "[t]he people of this state, as the ultimate source of legitimate political power, are of course free through constitutional amendment to adopt whatever changes in the existing system they consider appropriate, subject only to limitations contained in the Constitution of the United States." 34 Cal. 3d at 680.

Plaintiff's position thus ignores the clear holding of *Deukmejian*. It also defies the plain text of the California Constitution in suggesting that California voters cannot amend their own constitution. The California Constitution explicitly allows the Legislature to propose, and voters to approve, amendments to the California Constitution. Cal. Const., art. XVIII, § 1 (with a two-thirds vote, the Legislature "may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal"); *see also id.*, art. II, § 8(a); *id.*, art.

XVIII, §§ 3-4. The Legislature followed that process here, putting to the voters a proposed constitutional amendment that, if approved, would amend the California Constitution to impose a new congressional district map "notwithstanding any other provision of this Constitution or existing law." Assemb. Const. Amend. No. 8, § 4(b).

Having raised a claim based on *Deukmejian* that is clearly foreclosed by *Deukmejian* itself, along with the California Constitution's plain text, Plaintiff's claim is "'obviously without merit'" and thus constitutionally insubstantial. *Goosby*, 409 U.S. at 518; *see also Ex parte Poresky*, 290 U.S. at 32; *Hannis Distilling Co.*, 216 U.S. at 288. And even assuming that the California Constitution forbids constitutional amendments—despite it expressly saying otherwise—Plaintiff at most could have alleged a violation of the California Constitution, not a violation of the U.S. Constitution that raises a substantial federal question. *See Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025) (a violation of state law creates federal-court jurisdiction only "[o]n rare occasions").

CONCLUSION

The Court should decline to convene a three-judge panel.

Dated: October 24, 2025

Respectfully submitted,

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